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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
January 24, 2005
LB 84, 60, 73, 310, 375

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 24, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 84, LB 60, LB 73, LB 310, and LB 375. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: Well, good afternoon, everyone. I'd like to welcome you to the meeting of the Banking, Commerce and Insurance Committee. My name is Mick Mines and I'm the Chair of the committee and I represent Legislative District 18. I'm from Blair. First order of business today, please turn off your cell phones, beepers...man, look at the arms go into their pockets (laughter). Thank you. That will help us get through this without distractions and I'd also like to introduce the members of this committee who are with us right now. On your left, my right, Rich Pahls from Gretna; Senator Jim Jensen from Omaha; Senator Pam Redfield and Vice Chair of this committee from Ralston; Bill Marienau to my right is our committee counsel. Our committee clerk is Jan Foster. LeRoy Louden from Ellsworth; Senator Mike Flood from Norfolk; and Senator Chris Langemeier from Schuyler. We'll take up the bills in the order that they are posted and we will get through them as best we can. I know we had a lot of folks interested in offering comments today and we're going to give everyone a chance to speak. Our hearing today is part of your process. It's the public part of the process and we do encourage you to offer your thoughts, ideas, and comments and please do so in as succinct a manner as you can. I'm going to ask you to help us with a few things. If you testify there are testifier sheets on the table before me and I ask that you fill those out prior to speaking. They're also back at the doors. And then as you prepare to speak, please sit on-deck where Senator Byars is in the front row right now. It just helps facilitate things a little better. And I will be passing around a sheet if you don't wish to testify that you can simply put in your name and tell us if you are in support or opposition to a particular bill. Our procedure is the introducer; the senator will introduce the bill first and then I will ask for proponents, opponents, and those

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that wish to testify in a neutral capacity. I'll ask for a show of hands at that time. We're going to try and give everyone equal time and then following all the testimony the senator may choose to close. If you have a prepared statement please bring it forward when you testify and hand it to our page. The page will then distribute to the members of the committee so we can follow along with your comments. Written materials as well can be distributed by handing those to the page and they'll be inserted in the record. Very important when you testify, please state your name and spell both your first and last names for the record. That way the clerk as well as those that put the record together know who you are. Having said that, welcome. Welcome to our hearing and I will open the first hearing on LB 84 and welcome, Senator Byars.

LB 84

SENATOR BYARS: Thank you, Senator Mines, members of the banking and insurance committee, appreciate you hearing LB 84 this afternoon. This truly is a very simple piece of legislation although I think it's extremely meaningful because it has not been brought to me by any special interest group or group of people, something that I felt through reaction from constituent contact, felt that it was something that this committee would have an interest in and certainly should have a discussion. So the bill is introduced on behalf of myself but I think it's introduced to benefit all of the constituents in my legislative district. And I am Dennis Byars from the 30th Legislative District, B-y-a-r-s, the "caring and sharing district". But I think it's introduced on behalf of all of the people of the state of Nebraska who have been subjected to catastrophic illness, particularly being stricken with cancer, had members of their family stricken with cancer. And they have been confused about what it is that the insurance policy that they feel that they have coverage from, they're very confused about what it is that they have and what they don't have. So very simply put, LB 84 requires the disclosure of more information. It asks the insurance industry to proactively be aware and make sure that all of their purchasers of their policies are aware of the cancer screening portions of their policies. It requires the applicant to be given an outline of the cancer

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screening coverage and the parameters of that coverage that are provided in the policy at the time the application is made. It applies to policies that are written for supplemental Medicare coverage as well as all other policies written in the state of Nebraska. It is not a mandate for any coverage or any increase in coverage of treatment, drugs, or any kind of programs. It is strictly asking that the insurance industry shares more information at the time of application. There is no cost to the Department of Insurance for enforcing the bill, should be minimal cost to the insurance industry for providing a piece of paper or part of their explanation of what it is in cancer screenings that they provide in a policy. The first couple of calls I had on this I assumed quite honestly that as most of us, we enter into some contracts and we don't pay as much attention as we should. And those I've continually over the past several years had more communication from my constituents that it seems to be something that could be corrected in a very easy manner. So it's that simple, Mr. Chairman and members of the committee. I would ask that you would consider LB 84 and hopefully provide more information to purchasers of cancer insurance coverage in the state.

SENATOR MINES: Thank you. Nicely done. Members of the committee, do you have any questions for the senator? Senator Redfield.

SENATOR REDFIELD: I do. Senator Byars, I'm looking at page 3, section 2 where you charged the director of insurance to prescribe the format and content of the outline. And I know that there is a move to move more and more to uniformity within the states where insurance carriers that provide insurance in a number of states might be able to use the same type of materials, the same forms. And I'm just wondering if our director of insurance prescribes a format if that might be a problem that each state might have a different format. Would you have any objection if we were to adjust that so that they could use a uniform form for multiple states?

SENATOR BYARS: Absolutely, no problem whatsoever as long as we accomplish the goal of making sure the applicants have appropriate information, no. I'm certainly for anything we can do to make all of this process easier and make all of us do it better.

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SENATOR REDFIELD: Thank you.

SENATOR MINES: Any other questions for the Senator? I have one, Senator. Why just cancer screening? Why not other catastrophic illnesses?

SENATOR BYARS: Cancer is the number one issue that has come to me. Being a cancer survivor myself and having gone through this many years ago when we still had...didn't have any portability and we had a situation where if you had some preexisting conditions and I didn't understand the policies that I had. And so that probably makes me more sensitive to the issue of the cancer...

SENATOR MINES: Okay.

SENATOR BYARS: Would I have any objection to having it expanded? No.

SENATOR MINES: Okay.

SENATOR BYARS: But that is my primary interest at this point.

SENATOR MINES: Understand, understand. Thank you. Yes, Senator Louden.

SENATOR LOUDEN: Yeah, Senator Byars, I think this is something that's kind of important to bring forward. When you just have including cancer screening, that covers a lot of territory. Do you think the director of insurance would be able to put that all into something that would be easy reading for the average consumer to understand or what? I mean...

SENATOR BYARS: Yes. For the type of screenings that are available for cancer, yes. It isn't that lengthy. When you talk about screenings, preventive screenings for types of cancer, it's not that lengthy. You don't have a huge laundry list.

SENATOR LOUDEN: Then it'd be just for, you say four types is what you would...

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SENATOR BYARS: That would be primarily, yes.

SENATOR LOUDEN: Okay. Thank you.

SENATOR MINES: Is that it? Thank you, Senator Byars.

SENATOR BYARS: Thank you, Senator Mines and I will waive closing.

SENATOR MINES: Great. I would ask for a show of hands. Those of you that are in support of Senator Byars' bill, LB 84, would you please raise your hand? I see none in support. Those in opposition to the bill? I see one lonely hand in opposition. I see two in opposition. Are there neutral testifiers? Anyone in a neutral capacity? Very well. Since we have no one in support, those in opposition first. Janis, good afternoon.

JANIS MCKENZIE: (Exhibit |) Afternoon, Senator Mines. Members of the Banking, Commerce and Insurance Committee. For the record, my name is Jan McKenzie. I practiced all week so I'd get it right today, spelled J-a-n M-c-K-e-n-z-i-e. I'm the executive director for the Nebraska Insurance Federation, here today in what we would like to portray as mild opposition to LB 84. Basically, in terms of just the way the bill is written, certainly my companies are not in any way opposed to cancer screening and have over the past few years voluntarily added additional forms of screening to coverage even without mandates. I want to point out a couple of things and I do have a handout for you that we had questions about in the way in which the bill was drafted. The first section, if you have it in front of you really basically deals with what is called Medigap. And in reality what happens if a person has a Medigap policy, whatever is covered by Medicare is covered under the Medigap policy so our question is whether or not it's relevant in practicality to include this language in the section of statute that deals with Medicare, Medigap supplemental policies. Med sup, Medigap policies. If Medicare covers it, what the Med sup policy does is cover the portion that is not covered by Medicare if an individual has that kind of policy. The second thing I want to bring up is in section 2 it says no health benefit policy or certificate. Quite honestly, we don't have anything in statute that we don't have a definition for health benefit

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policy or certificate. What we have is a health benefit plan and I've had that distributed to you. If you look at that page and you may have remembered from LB 119 that you've already advanced to the floor, there are a number of policies and plans that are not included in what I think most people would consider a health benefit plan so we need to be clear as to what kind of policy it is we're talking about because as you see, there are numbers of types of policies that are not considered in this concept at least. The third concern I would bring up for your consideration is just once again this kind of, I guess, requirement does not apply to ERISA plans which are those self-funded plans provided by employers. So we're concerned about how many actual Nebraskans would get the benefit of this requirement for outline and would we once again be requiring additional disclosure or paperwork to just those companies that provide individual policies. And for the new members of the committee we do have a number of individuals in Nebraska who have to go out shopping for their own insurance either because they're very small employers or they're self-employed. And so we continually testify in opposition to legislation that would put additional burden on companies that are providing individual policies because it is very difficult for those self-employed people and small businesses to actually afford insurance so we try to always bring that point up to the committee. Tom Jenkins from Blue Cross/Blue Shield who is one of my board members and a member of the federation is here to follow me. He can answer specifically any questions you might have about what is the state of the art and what actually happens in terms of notification to folks when they are applying for insurance relative to cancer screening. With that, I'd answer any questions you might have.

SENATOR MINES: All right, thank you. Committee, any questions for Ms. McKenzie? Seeing none, thank you.

JANIS MCKENZIE: Thank you.

SENATOR MINES: Thank you. Second testifier in opposition. Mr. Jenkins, nice to see you.

TOM JENKINS: (Exhibits 2, 3, 4) Thank you, Senator. Good afternoon, I am Thomas Jenkins. I'm vice president and associate general counsel at Blue Cross/Blue Shield of

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Nebraska. Jan, I don't know about state of the art.

SENATOR MINES: Do you want to spell your name, please, Tom?

TOM JENKINS: Sure, J-e-n-k-i-n-s.

SENATOR MINES: Thanks.

TOM JENKINS: Thank you. I didn't make any attempt to cover...discuss with other insurers what their practice is in this area and, in fact, I guess one of the points I would make, our practice varies greatly by type of product. I mean I shouldn't say greatly. We've always got this over-arching desire to have clarity about the benefits that are available under a contract and although Jan McKenzie mentioned the exclusion that's available for ERISA self-insured plans, I guess the point is there that the law you pass would not directly impact them. But I think they've got that same concern and those plans are required to have a document that describes the benefits. I guess the...let me say first what as a general rule Blue Cross covers in this area. And to make the point that again we're not opposed to, certainly not opposed to the benefit. We do provide I think pretty good benefits in this area. As a general rule, we cover mammograms, pap smears, colonoscopies and sigmoidoscopies. Also, as a general rule, we do not cover routine care, preventive care. So and I guess here's the point. We don't generally specify those things by disease, the routine care. You'll have an exclusion and we're required to have in our advertising an exclusion and we do have one for routine care except as described in the contract. It would be unusual to come back then and say, well, for this disease we do this and for this disease...in other words, we cover surgeries, we cover radiology, we cover diagnostic lab tests. But it's not usual to have a reference to specific diseases because the list is just too long. But we cover those four. The kinds of cancer screenings that generally are not covered by our company and could vary would be, though, if you think of a physical exam you're going to have a visual exam as part of that. That, if it's just a routine physical exam, your five-year check-up. That would be a cancer screening. What do you say about that piece of cancer screening within the context of this general physical exam? Or a manual or digital exam for cancer might also be part of that screening exam. So

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again, just the point being that it's not usually disease specific that we get down to. The various markets differ and I think Ms. McKenzie did mention this. Altogether we've got Medicare. Those policies which pretty much consumes the longer section 1 in this bill, this would be a very typical document from company to company. It's called an outline of coverage and it's required to be given only in Medicare supplement policies. It doesn't exist in our state with respect to under 65 policies. But this Medicare supplement outline of coverage describes the ten standardized plans and they are standardized. They don't vary from company to company. But the big point is here, they are to supplement Medicare. So Medicare pays 80 percent of physician's service. The supplement pays the other 20 percent. But exactly what's covered in the way of physician services is not even a decision for the insurance companies. It's the decision for Medicare. So if Medicare covers it then the insurer does. And I did grab this book and I'd be glad to leave one of these. This is the Medicare new booklet you've probably seen. This is a HHS document but they cover colorectal cancer screening, they also specifically cover pap tests, screening mammograms. The list is longer than that but the point is, if they cover 80 percent of it we cover the other 20 percent. If they decide a few years from now that a certain one of those tests is no longer viable or efficient and they aren't going to cover it anymore, then we aren't going to cover it anymore if you get the concept there. So that's Medicare. On the individual side, again, we're saying that this is on individual policies, nongroup policies, certainly no quarrel with the concept that it should be clear. And I would say to Senator Byars the very effort in going through this, I think we probably could bone up and say those coverages that we do cover. But we would like to do it in this advertising brochure rather than a separate piece of paper we're constantly getting from our agents who are our voice to the customer. There's too much paper here, you know, and less is more in this area. I think this is the brochure that's designed to jump out at people we'd like to have. And we do already have in here that we cover the pap smears and the mammograms and we've got the routine care exclusion. But another piece of paper would not be helpful in that regard. And then on the group, the employer side of the business. There really is not much of a purchased...I think the concept here is that the disclosures would allow people to make a better purchase

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decision but if you think about it you just got hired, you're at this employer. Your decisions are two, take it or don't. It is important that you understand as you go forward with your coverage what your coverages are before you incur the services but ordinarily the purchaser is the employer. It's not the patient. On our...again I say it varies even within our company. Our small group insurance we now do cover the routine care so whereas I said, we don't cover it on the individual side because that's what that market seems to need. We do on the small group side to an unlimited amount or the same limits as in the policy for the others so not only do they cover those four exams I mentioned, they would cover the others that I said we don't ordinarily cover on the individual side. My point, if it's confusing, is that there are variations by market, over 65, under 65, group, individual, ERISA, non-ERISA, and the outline of coverage that's mentioned here is a new concept in Nebraska except for the Medigap which is a standardized situation. So again, no problem with the concept of fair disclosure and we should always be looking for ways to improve that but we'd really like to get away from the idea of another piece of paper somewhere. And we do have laws, we have advertising laws that do require us to set...every insurer to set forth the general coverages in any advertising and every insurer you can believe me is going to have their advertising. But those advertising, if they describe the benefits they have to describe the exclusions, too. And that's why we have that, you know, that's one reason we have that exclusion in there for the routine care so.

SENATOR MINES: Great, thanks. Questions?

RICH PAHLS: Are you saying this is redundant if we ask for...I'm not?

TOM JENKINS: There is no specific requirement in Nebraska law now that cancer is a disease to be singled out and treated separately. So in that sense it would not be. It is required to set forth coverages and exclusions. I'm just saying that the way companies set those forth is usually not along the lines of this disease, that disease, the next disease.

SENATOR MINES: Senator Redfield.

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SENATOR REDFIELD: I'm looking at page 2 on the bill, subsection 2(a) where there is added language. But that section actually exists in statute now and you are required to give a description of the principal benefits in coverage provided in the policy.

TOM JENKINS: Right.

SENATOR REDFIELD: And he is asking us to add...Senator Byars is asking us to add including the cancer screening coverage. Now, I think what I'm hearing him say is that you're giving people a description but it's hard for them to understand. And he wants something that's in a bullet form, an outline form so that it's clearer for them to understand.

TOM JENKINS: Right.

SENATOR REDFIELD: The question I would ask is if the same people who wrote the description that they can understand writes the bullets, will it be any more understandable?

TOM JENKINS: We can always do better on understandability. With respect to this particular one that you're pointing out because as you've pointed out, this is a piece of Nebraska law that already exists. This is the one, though, that deals if you look up on line 4 on that page with Medicare supplement policies, there I'm saying I think it is extremely clear in the Medicare and You booklet and that's where it should be because this just comes along and say, whatever these guys said, we're with them, we cover the other 20 percent. So that's why this is a short document and it carries a lot of information in the way of tables. But it doesn't repeat everything that's in this 65-pager here and I don't think most people want another 65-pager. So that's just Medicare supplement; different story on the individual policy and there isn't this and there isn't this already. And there's just usually a brochure and then you go right to the application. Then you get to the policy and with the policy you have in Nebraska a 10- or 30-day free look where you could return the policy if you don't like what the coverages said but they must really match up with the short version which is in the brochure.

SENATOR REDFIELD: Thank you.

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SENATOR MINES: Thank you. Other questions? Senator Louden.

SENATOR LOUDEN: Yeah, Tom. To follow up on the questioning that I had for Senator Byars and that same section 2 under (a) and it's including the cancer screening. Now, where does skin cancer fit in with that? I mean, he talked about the four major ones or something like that. You're talking about internal cancers and stuff. What about cancer screening for skin cancer, dermatology, and that sort of thing...?

TOM JENKINS: I thought about that...

SENATOR LOUDEN: The way this is written, my understanding is that would cover that, too?

TOM JENKINS: Well, in fairness, this doesn't...as Senator Byars says, this doesn't say we have to, that an insurer has to cover anything. Now, again, this particular section that you just referenced is dealing with the Medicare so whatever Medicare covers the private insurer...and this won't vary by company. You know, we have...that might be a piece of news, too. Insurance policies in that one area alone, Medicare supplement policies, are by law standardized nationally. There are only ten different ones that a company could sell and we don't have to sell all ten of them but we sell four of them. They're the ones highlighted in blue. But the benefits are going to relate differently to...there are more and more benefits as you go up from Plan A to Plan I and J. For example, some of them cover the Part A hospital deductible, the cheaper ones don't. But the skin cancer would be, as I understand it, Senator Johnson could probably tell me better but I think that's usually a visual exam as part of an overall physical. And so, what do you say about that? If you don't cover routine physicals you're saying we don't cover that. And I guess this is where it would get difficult to say something more specific about that than we don't cover routine physicals. I'm never saying if that...I mean, I think we can always do better on getting clearer, almost always. But it is a challenge that I considered and I think you're...am I answering your question? I don't know what you'd say about the skin cancer screening except our answer is, in many of our policies we don't cover it because

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it's part of that routine physical that we don't cover. Oftentimes you can buy a supplemental rider to come back and you want to add some routine coverage in, \$150 or \$300 worth of routine coverage so there's really a lot of options to the insured there whether that's the employer or the patient.

SENATOR MINES: Great.

SENATOR LOUDEN: Okay, thank you.

SENATOR MINES: Thanks, Tom. Other questions? Seeing none, Tom, thanks for your testimony.

TOM JENKINS: It's kind of complex and you know what? I would be glad to leave these again. This is from HHS. This is our version of an outline of coverage but it really isn't going to vary too much by Medicare supplement. Now this one is once you get into individual, it will be a lot different from carrier to carrier but there's a sample.

SENATOR MINES: Okay, leave those and we'll enter those in the record as well. Thanks. Any other opponents? Anyone wishing to testify in a neutral capacity on LB 84? Seeing none, I'll close the public hearing and turn over the chairmanship to Senator Redfield.

SENATOR REDFIELD: We will open the hearing on LB 60. Senator Mines, when you're ready.

LB 60

SENATOR MINES: Thank you, Senator Redfield, members of the committee. My name is Mick Mines, M-i-n-e-s, representing the 18th Legislative District. And I'm the principal introducer for LB 60 and I bring this to you on behalf of the Nebraska Car Rental Association. This is a very simple bill to understand. It would enact a new section that provides any insurance or self-insurance covering a renter or rental driver of a private passenger vehicle rented upon a written rental agreement shall be primary to any insurance or self-insurance covering the rental car company, unless otherwise provided by the written agreement. I have other testifiers behind me and would ask that questions be

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directed to them.

SENATOR REDFIELD: Thank you. Are there any questions? I don't see any. Will you close?

SENATOR MINES: I will waive closing.

SENATOR REDFIELD: Thank you, Senator. How many do we have in support?

AUDIENCE: Three.

SENATOR REDFIELD: We do. Please state your name and spell it for the record.

MIKE GOTTWALS: (Exhibit 1) Thank you. Michael Gottwals, G-o-t-t-w-a-l-s. I'm the vice president and general manager for Budget Car and Truck Rental here in Nebraska. We are an independent licensee. And I also represent our trade association, car and truck rental association or leasing association (Car and Truck Renting and Leasing Assn.) here in Nebraska. And I do have a handout for each of you. Thank you. I'd like to thank you for the opportunity to address you today. I'm going to mostly read a prepared statement. I'm here, as I mentioned, representing both our trade association and our company. We are seeking relief from the primary liability statute here in Nebraska, and we're asking basically for the same treatment that long-term lessors enjoy today in our state. By way of example, let us say that our company budget rents a vehicle to a customer who agrees to pay us a base rate for the use of our vehicle. Further, this renter has a personal automobile insurance policy issued following appropriate underwriting and premium payment that provides both liability and collision coverage to our renter. And that coverage includes collision coverage on our rental vehicle. Subsequent to the transaction this renter is the cause of an accident that results in damage first to the Budget vehicle and also to a vehicle owned by an innocent third party. Under the terms of our rental agreement the renter's insurance company will compensate Budget for damage sustained to the Budget vehicle less the deductible if applicable. Under the current Nebraska insurance statute, however, Budget must assume liability for damage to third parties and their property. This scenario plays out time and again in our business here

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in Nebraska. So the essence of LB 60 establishes that the burden of paying damages due to an accident is borne by those causing the accident and by their insurers. The rental company is with a renter for several minutes at most. Many of our customers, we're with them for seconds whereas the insurer has thoroughly evaluated the insured and established its rates accordingly. Rental car companies and our renters who do not cause accidents should not bear the burden of higher costs because of drivers that do. This position is supported by litigation in several states including a 1996 decision by our Nebraska Supreme Court. That was Leader National Insurance Company v. American Hardware in this case which involved a vehicle test drive. The Supreme Court found the customer's own insurance to be primary and the automobile car dealer's insurance to be excess. This change for us in 2000, because of a Supreme Court contrary decision issued in State Farm v. Cheepers Rental Company which was a small independent company here in Nebraska which I might add is no longer in business. I won't say as a direct result of this decision but I certainly know it affected their costs significantly. In that decision, the court ruled that the Cheepers policy of insurance in effect at the time of this rental was primary. The court also stated, "We make no comment on the issue of priority where the owner of a rental car is self-insured and such fact is disclosed in the operative rental agreement." And this language, we believe, has cost a lot of confusion both for our industry and for our customers and their insurers. Since the Cheepers decision, renter's insurers have been unwilling to accept responsibility for the renters at fault damage. This has placed the burden on the car rental companies which I remind you, if we were a long-term leasing company we would not have. The effect of this change to our company, Budget Car and Truck Rental of Nebraska, has been a six-figure increase in the cost of our liability claims. Because we operate only in Nebraska, unlike many of our competitors and most of our small operators, we are unable to spread this cost over states with more favorable statutes. Moreover, passing this cost on to customers is very difficult due to the competitive nature of our industry. There are presently 35 states which allow our industry to provide excess coverage including our neighboring states of Iowa, South Dakota, Missouri, Kansas, and Colorado. Vehicle operators in those states escape many liability claims we must pay in Nebraska. There is in your

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handout a complete list of those 35 states. As earlier stated, our logic for seeking relief in LB 60 is quite simple. We are with a renter for a short time. We do not have the ability to underwrite the insurance risk of those people nor other authorized drivers. Many courts have found in favor of this view. Two court decisions in 2003, New Hampshire Indemnity v. Budget Rent A Car Systems and one in Illinois, State Farm v. Hertz Claims Management and National Union. In both cases, the courts found the rental company's insurance to be secondary to the driver's. The analysis in the two cases, while specific to their individual states, is both logical and significant. The State Farm decision, citing the New Hampshire decision, found that "the public policy of protecting the public from motorists unable to compensate accident victims for their injuries is not implicated where coverage is a given and the only question is which insurance company must assume liability for coverage." In the State Farm decision, the court said that it did not make sense that the insurer of a rental car, rather than the insurer of the driver who is at fault for the accident, provides primary coverage. So, again, when a customer buys coverage on a personal automobile as we all do, most of the customers and prospective insurer can reflect on the terms and investigate each other before signing a policy. Unsafe drivers will pay higher premiums, safe drivers will pay lower premiums as is fair. This line of reasoning makes sense from an economic, legal, and public policy standpoint. As long as the public is protected and the rental customer's carrier faces foreseeable risk for which it has received premium dollars, there is no valid reason to burden the rental operator and its customers with primary responsibility. Moreover, passage of this legislation will surely provide consumers of rental vehicles with lower cost services. Included in your handout is a letter from Mr. Donald Fonte, director of government relations with the Hertz Corporation. He expresses several important points in support of LB 60. I urge you to read the comments from an industry-leading organization. Our need for relief is compelling and urgent, and I thank you today for the opportunity to give testimony regarding LB 60.

SENATOR REDFIELD: Thank you, Mr. Gottwals. I have a couple of questions. When someone comes in to rent an automobile, do you have them show you any kind of proof of insurance?

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MIKE GOTTWALS: Senator, on a busy day we will rent 150 cars. To try to qualify each customer whether they have insurance or not, frankly, is not realistic. We have competitors who will rent 400 or 500 cars in a day's time so we do not. There are occasions at our smaller locations where we may well ask for proof of insurance, but it does not happen in most cases.

SENATOR REDFIELD: So, if we were to adopt this legislation we wouldn't really be treating all of your customers alike because those that have insurance would assume the risk. Those that did not have insurance would not. Is that correct?

MIKE GOTTWALS: Well, if there is no insurance or coverage in place, Senator, we understand we would be responsible if that answers your question.

SENATOR REDFIELD: All right. On a personal level, your own personal car, when someone else drives that vehicle with your permission, they have an accident. Who bears the responsibility, your insurer or theirs?

MIKE GOTTWALS: Customarily, that person who's operating my vehicle would have his or her own policy which normally would cover them operating someone else's vehicle so their insurance would pay.

SENATOR REDFIELD: Their insurance would be primary, not yours?

MIKE GOTTWALS: Correct, correct.

SENATOR REDFIELD: Are there other questions? Senator Johnson.

SENATOR JOHNSON: Well, I think every one of us who has ever rented a car always has this question because we always get asked it with the inference that you have to have this insurance. If, you know, I guess I'm thinking out loud here because I don't know the answer to my own question here because I would run into this every time I rent a vehicle. Do I need to give you that extra money...

MIKE GOTTWALS: Um-hum.

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SENATOR JOHNSON: ...and they're perfectly willing to take it and yet is my insurance company that I've paid for already, primarily responsible?

MIKE GOTTWALS: Sure.

SENATOR JOHNSON: So can you clear this up for me?

MIKE GOTTWALS: Yes, I can, Senator Johnson.

SENATOR JOHNSON: I hope so.

MIKE GOTTWALS: It's a good question and one that is confusing to many consumers. We distinguish between...we sell a coverage on our vehicle, loss or damage to our vehicle which many people purchase, particularly those who may not own a vehicle, don't have coverage elsewhere, and under our agreement our renter is responsible for loss or damage to our vehicle. That's an issue that is completely separate from LB 60 because LB 60 basically deals with our renter causing damage to other persons or other property, not our property. So what I believe you're referring to is we will ask every customer as we are required to do for disclosure purposes if they would want to cover our vehicle with our protection and, believe me, we train our people if someone is protected elsewhere we have no problem explaining that they may have coverage elsewhere and not need ours in the case of coverage on our vehicle. Have I made the distinction clear?

SENATOR JOHNSON: Well, maybe at this time regarding how your company works, but I'm not so sure that the other company that I insure with makes it clear of my interrelationship with your company.

MIKE GOTTWALS: I see.

SENATOR JOHNSON: And I would suspect is pretty universal.

SENATOR REDFIELD: Are you through? Any other questions, Senator Johnson?

SENATOR JOHNSON: No, thank you.

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SENATOR REDFIELD: Are there other questions? Senator Louden.

SENATOR LOUDEN: Yes. My understanding is like when we go down and rent a car and we pay what, ten bucks for a day for insurance for your car? And that's mostly insuring your car for the property damage and probably insuring whoever car we run into. Is that included in that \$10?

MIKE GOTTWALS: It is not, Senator Louden. We actually offer several different protections, different coverages. One covers our vehicle. In the case of most of the competitors in our industry, we also offer what we call a supplemental liability policy. Under our agreement, we provide coverage to state limits which I'm sure you all know is limited financially. We offer for an extra price a supplemental coverage that provides, in our case, up to a million dollars of additional coverage to our renter should they cause damage to other property or other persons.

SENATOR LOUDEN: Okay. And if we don't buy that then it's actually our own private insurance has covered us under our liability such as if we were borrowing a car and driving a friend's car or something like that.

MIKE GOTTWALS: Well, under the statute here, Senator, we provide coverage up to the state limits on a primary basis. And that's...

SENATOR LOUDEN: Um-hum, okay.

MIKE GOTTWALS: ...that's what we're seeking relief on if you have your own policy of insurance or self-insurance.

SENATOR LOUDEN: All for that same initial cost or is there a different cost? Because usually...well, I rented a car the other day and I think from Budget and it was what, \$9.99 for insurance for the day or something like that?

MIKE GOTTWALS: Well, that I'm guessing would have covered our rental vehicle. We do not charge any specific premium, Senator, for liability coverage to state limits. It's included in our base rate which is why I am certain that if we were given relief our base rate would reflect that relief, to some extent, in our pricing.

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SENATOR LOUDEN: Okay. That's where you have your liability insurance is in your base rate.

MIKE GOTTWALS: Yes, sir.

SENATOR LOUDEN: Okay. Then if this was passed then and if I go in and use my own insurance company, I would get a discounted base rate besides not paying the \$9 or the \$10?

MIKE GOTTWALS: Well, in effect, Senator, we would be relieved of that expense in our business and presumably that that savings would flow through to the consumer ultimately because our industry is incredibly competitive...

SENATOR LOUDEN: Now if I use my...

MIKE GOTTWALS: ...so I can't say it would be, you know, \$2 a day per se because it would vary probably company to company, too.

SENATOR LOUDEN: But at the present time if I use my own insurance, do I get a break on that base rate...?

MIKE GOTTWALS: No, sir, you do not.

SENATOR LOUDEN: ...I pay it either way?

MIKE GOTTWALS: Correct.

SENATOR LOUDEN: Okay. And if, in other words, the base rate at the present time, it doesn't make any difference whose insurance I use, but if I buy your insurance as a matter of convenience because I don't have to hunt up the paperwork for my insurance to show you, right?

MIKE GOTTWALS: Well, if you were to buy our supplemental liability insurance, Senator, we would provide coverage to you for up to a million dollars for any loss or damage you caused to other persons or property and your insurance company, presumably, would never come into play. Realistically, the people who buy our supplemental liability insurance are people who are uninsured because they may not own a vehicle or are perhaps underinsured or they may be working for someone else and are able to pass that cost on

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and they don't want to take on the liability and report it to the wrong company, that kind of thing.

SENATOR LOUDEN: Or else a long ways from home and don't want to get mixed up in a court case.

MIKE GOTTWALS: Could be, exactly.

SENATOR LOUDEN: Um-hum, okay. Thank you.

MIKE GOTTWALS: You're welcome.

SENATOR REDFIELD: Senator Langemeier.

SENATOR LANGEMEIER: I'll pass. I think we've taken this far enough.

SENATOR REDFIELD: All right. Other questions? Thank you, Mr. Gottwals.

MIKE GOTTWALS: Thank you.

SENATOR REDFIELD: Next testifier?

VERGIL FLODMAN: My name is Vergil Flodman, V-e-r-g-i-l which is wrong, I know, but that's the way my folks spelled it. And the last name is Flodman, one o, F-l-o-d-m-a-n. I'm the owner of Dollar Rent A Car. We have offices in Omaha and Lincoln and I'm here in support of this bill because as Mike said, I feel that we're being treated very unfairly because I rent you a car for a day or an hour or a week and I have to primarily insure it. But another...a leasing company that leases you a car for a month is not the primary insurer. Our laws are different between a rental company and a leasing company which is basically the same thing. I'm leasing you a car for a day. They're leasing you a car for 60 days. In our laws, I think it states that if it's over 30 days it's called a lease. If it's under 30 days it can be a rent. It's called rental. Now I don't know why. That's just a term used. But basically you're doing the same thing, you're renting a car. And you rent a car from me or anything else. So I think it's fair that if the Legislature has decided that leasing companies can make the leasor (phonetic) primary then the same thing should happen to the rental companies that the leasee (phonetic) is

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primary. There's no reason it isn't. And I agree, the one thing I heard is that if I use your car and you offer to let me use it for nothing or you offer to let me use it for \$10, and I go out and run into somebody, as the driver of the car I do feel liable to pay the damage and my insurance company will. Just about every policy that I've ever looked at or bought has what's called DOC, Drive Other Car. If you look at your policies I think everyone would have what they call DOC. That covers it so you've already bought insurance to cover your driving another car. Well, in Nebraska you're buying that insurance again from me because I'm having to raise my rates, as Mike said, and you're buying it again. And you don't need to buy it again. There's no reason for double insurance. I mean, it's not necessary. So all we're saying is, treat us equally with leasing companies. You already have the insurance and you don't have to buy it. If you want, as Senator Loudon said, not to get involved, you can buy the SLI. The LDW is Loss Damage Waiver, as Mike said, which is strictly for our car. It's if you rent a car from me and I ask you, would you like to cover the car for...and it's not insurance. It's called loss damage waiver. We clarify that it's not insurance. That's so if you burn a hole in the seat you're not liable. We don't charge you for it. If you spill a beer or whatever in the car, you're not liable. We have to clean it up. If you don't take that or if somebody sideswipes you and you aren't around the cost of getting the car fixed is our burden because you paid us \$9.95 a day to cover the car we own that you rented from us. But that doesn't cover the other car, the car you drove. And what could happen is that I think is terrible is that if you were mad at your neighbor you could come, rent a car from me for \$9.95, go over and run into your neighbor's car and just wreck the heck out of it just for meanness, come back and say ha ha, Dollar, you have to pay for my neighbor's car. Even though I ran your car into it, you have to pay for it. Of course, in the rental agreement the funny thing is you have to pay for my car even though you hit the...whatever damage you did. But I have to pay for the neighbor's car that you were upset with. So I just think it's not right. It's not right that we're primary because we're not driving the car. We're not causing the accident.

SENATOR REDFIELD: Mr. Flodman, it's illegal in Nebraska to have an open beer in a vehicle (laughter).

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VERGIL FLODMAN: You could have been sitting in the driveway with it (laughter).

SENATOR REDFIELD: Are there any questions? Senator Flood.

SENATOR FLOOD: Mr. Flodman, is it your testimony that rates would go down, rental rates would go down if you were not required to carry primary insurance on rental cars?

VERGIL FLODMAN: Our cost would go down, Senator, and our rates are controlled by our costs. As any business runs, you take your cost and you add a profit and that's what you charge the consumer.

SENATOR FLOOD: But you'd still have to provide insurance on the vehicles, all the vehicles.

VERGIL FLODMAN: We have secondary liability, we cannot stop that.

SENATOR FLOOD: Sure.

VERGIL FLODMAN: Okay. Yes, we will always have liability. If you rent a car from us and you hit somebody and you have no insurance our insurance takes over and does it because you had no insurance. Okay. If yours runs out, let's say you run into a bus and you kill X people and you only have a million coverage. Well, after they get the first million for the first guy that died probably then they come back on us and we provide the rest of it so. But you already have that insurance.

SENATOR FLOOD: But it would be your testimony that car rental rates would go down in Nebraska if you were secondary rather than primary.

VERGIL FLODMAN: I feel they would, yes. I mean, you know...

SENATOR FLOOD: And your company's rates would go down.

VERGIL FLODMAN: Well, yes, our insurance rates would go down. My cost would go down.

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SENATOR FLOOD: But your...your car rental rates would go down.

VERGIL FLODMAN: Right, right. They should. You know what I mean? It's directly related but the problem you got there is, Senator, is that you pass this legislation and you rent a car from me today for \$30. We'll just use that example. And the bill takes effect and next year I'm still \$30 and you say you know, you told me, Mr. Flodman, that the rates would lower. Well, you have a cost raise on other things. I didn't raise the price but I was able to hold it stable. That could happen. I'm not going to say it will, but will you see it? Can I show it to you on your bill? No. I mean, I don't think I could.

SENATOR FLOOD: Thank you.

VERGIL FLODMAN: Um-hum.

SENATOR REDFIELD: Thank you, Mr. Flodman. Next testifier.

JEAN FAULCONBRIDGE: Good afternoon. My name is Jean Faulconbridge. That's spelled J-e-a-n F-a-u-l-c-o-n-b-r-i-d-g-e. I am here as a claims attorney from Zurich Programs Business which is a property and casualty insurer based in Omaha with...and I just want to tell you a little bit about our company. We have current annual revenues of \$1.4 billion and we are the market leader in auto rental insurance in the United States. We incorporated in 1954 as Empire Fire and Marine Insurance Company and just last year we changed our name to Zurich Programs Business to take advantage of the market strength and the synergy potential of the combined Zurich Insurance Companies which combined, formed the third largest P&C company in the world. This bill, LB 60, clearly states that any insurance or self-insurance providing coverage to a renter or rental driver shall be primary. And insurance covering the rental car company shall be excess unless the written rental contract provides otherwise. So the situation is that there is insurance. What you're doing here today passing on LB 60 won't affect whether there is or is not insurance. There are two policies that have coverage for a situation. The customer who rents the car may be covered by a personal auto policy or a business auto policy. The driver of the rental car also may have business auto or

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personal auto coverage and the rental company will have a rental liability policy. LB 60 simply resolves the question, who's on first, who is primary? LB 60 is a good bill because it provides certainty in an area which is now uncertain. As I was preparing to speak to you today I called our insurance commissioner, the Honorable Tim Wagner, and asked him what he thought. He said he's not going to take a position one way or the other on the bill but he said that right now in his office he has three active consumer complaints on this very issue. Insurance companies are arguing over who's primary and the claim is being left unresolved in the meantime. Certainty would be an improvement in Nebraska law. This issue is timely. This is a good time for this bill. You have before you a policy question, who should be on first? The first reason why I think the personal auto or business auto policy should be primary is because they are best able to underwrite and assess the extent of the risk. When we buy personal auto coverage, for example, I've got GEICO and at times I've had State Farm. They do not ask me about my rental habits. This is because most people do not ever rent a car. Those very few who do will rent very seldom, will get a car similar to their own, and will rent only for a few days. Statistically and actuarially speaking, the possibility that an insured will rent a car and then wreck it is so remote it simply doesn't matter when personal insurers set their rates. If it did matter, they would ask. The rental company does not have the opportunity to run the MVR on the individual who rents the car, let alone on all their family members and friends who drive the rental car. A risk should be borne by those best able to underwrite it, by those best able to predict the extent of that risk. The second reason I think this is a good bill is because the personal auto carrier is best able to hold a driver accountable. LB 60 places the primary burden for paying damages where it belongs, on the driver who causes the accident. It places the burden for payment on the insurance company that investigated that driver's driving habits. When the policy is renewed or nonrenewed it will be the at-fault driver's policy that pays the price for the negligent driving. The personal insurer is in the best position to assess consequences to those bad decisions. The third reason why this is a good bill is that it will have a positive impact on rental insurance rates in Nebraska. For my company, one of the biggest single factors in establishing our rental

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insurance rates is whether in a given state our insurance covers on a primary, excess, or joint basis with the renter's policy for damages when an accident occurs. And I think this is what many of you have been asking today and this is the sentence you probably are going to want to listen to. On average across the country our company's insurance rates are 35 percent higher in primary states than they are in excess states. The passage of LB 60 should have a positive impact on premiums for Nebraska car rental companies which can be passed along to their customers. In contrast, the passage of LB 60 will not have an effect on personal auto rates for Nebraska drivers. There should be no effect on general personal auto rates or business auto rates. The specific bad actors will feel it, which is as it should be. The final reason that I believe this should be passed is that it will bring Nebraska into line with a majority of states. My companies, Zurich Programs, carefully tracks the laws of primacy in all 50 states. Our insurance rates are adjusted state by state, depending on whether we will be primary, excess, or have joint coverage with the renter's carrier. In ten states if shifting language is in the rental contract, our policy has no responsibility to an insured renter. In 25 states our coverage is either excess to or provides joint coverage with the renter's policy. Only in 15 states whether by statute or case law are we primary. This bill would bring Nebraska into the majority. In summary, the burden of paying damages because of an accident should be borne by those causing the accident and by their insurers. Rental car drivers that don't cause accidents should not be stuck with higher rental rates because of drivers that do.

SENATOR REDFIELD: Thank you. Are there questions? Senator Langemeier.

SENATOR LANGEMEIER: So if you approve this bill and you create the primary back to the car driver/renter at that time, then do you plan to limit back to Budget or Dollar rental, say, okay, only 30 percent of your customers? What if they don't have liability coverage? So are you going to insure them at a level that says, okay, only so much of your business can go to people that don't have primary liability and those that don't because if they can lease to a hundred percent of their customers and not have primary liability you can't afford to lower your rates for them because there

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is no primary, you're still primary?

JEAN FAULCONBRIDGE: We have experience across the country and our rates would reflect the average outcome in an excess state if Nebraska passes this.

SENATOR REDFIELD: Senator Louden.

SENATOR LOUDEN: Thank you. At the present time, we have the option in Nebraska whether we get insurance or not, right, when we rent a car? We can either use our own insurance company or we can use the car rental's, either way. Am I correct?

JEAN FAULCONBRIDGE: No, actually, the current state of the law under State Farm v. Cheepers is that the rental car company's liability insurance must pay on a primary basis.

SENATOR LOUDEN: Okay, but you'll have that either way. But when it comes to the insurance I can either use my own insurance company or I can use yours for damage to the car or anything like that.

JEAN FAULCONBRIDGE: If we're talking...I think what we're talking about here is liability insurance. That's what this bill concerns. And no, there's no choice. The consumer has no choice as things stand right now. The consumer is covered by the rental car company's liability insurance which is very expensive in a primary state.

SENATOR LOUDEN: When I go down and rent that car for ten bucks and that includes the liability insurance?

JEAN FAULCONBRIDGE: It does, it does under Nebraska law.

SENATOR LOUDEN: On myself or just on the car rental company?

JEAN FAULCONBRIDGE: If you have no insurance, the car rental company's insurance has to cover you.

SENATOR LOUDEN: Okay, thank you.

SENATOR REDFIELD: I'd like to piggyback on that question. Do you write the insurance for the supplemental liability

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for your company?

JEAN FAULCONBRIDGE: Our company does have an SLI product, yes.

SENATOR REDFIELD: And you market it through the rental companies in Nebraska?

JEAN FAULCONBRIDGE: Yes.

SENATOR REDFIELD: So you would be providing that if the renter paid that extra premium.

JEAN FAULCONBRIDGE: Yes, and that's a good point, Senator Redfield. Under this bill, the language of this bill states that any insurance providing coverage to a renter shall be primary. Well, that includes SLI. But when you purchase SLI, that product itself says it will be primary so that SLI product that you paid your hard earned money out for will provide coverage in place of or before your own personal auto policy.

SENATOR REDFIELD: In one of your points, you said that insurers know better their drivers and that they run their driver's license, they look at their records, and that that's their obligation. You sell insurance to those drivers without actually seeing their driving record, correct?

JEAN FAULCONBRIDGE: We...oh, you mean the SLI? Yes, that's true.

SENATOR REDFIELD: Yes, you do. And so you are actually selling the basic product to the rental companies without knowing the driving habits of the renters whether, in fact, they have insurance or they don't...

JEAN FAULCONBRIDGE: And it's priced accordingly.

SENATOR REDFIELD: Considering your risk, considering your costs, why don't you require them to check and see if the renter has insurance?

JEAN FAULCONBRIDGE: Because our customers are the rental car companies and they say they don't have time to do that.

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And they don't...they have to move these things along so we are forced to price that product accordingly.

SENATOR REDFIELD: So you price as if no one had insurance.

JEAN FAULCONBRIDGE: We price the SLI for all sorts of drivers...bad drivers and good drivers.

SENATOR REDFIELD: The SSI (sic: SLI) but what about the basic insurance that is now primary in Nebraska as the court has decided?

JEAN FAULCONBRIDGE: Yes, that is expensive, too, because we have to price it for bad drivers as well as good drivers.

SENATOR REDFIELD: And you price it as if everyone is uninsured?

JEAN FAULCONBRIDGE: Well, we have...

SENATOR REDFIELD: ...or you average.

JEAN FAULCONBRIDGE: ...to price it as though we're primary because we are, yes.

SENATOR REDFIELD: Okay. All right, thank you. Are there any other questions? Thank you. Are there any other proponents? I don't see any. Are there any opponents? I do see one. Did I see a hand in opponent? Would you like to come forward and testify? Please state your name and spell it for the record.

JIM DOBLER: (Exhibit 2) Senator Redfield, members of the committee, my name is Jim Dobler. It's J-i-m D-o-b-l-e-r. And I'm executive vice president and general counsel with Farmers Mutual Insurance Company of Nebraska. I'm also a registered lobbyist and today I appear on behalf of Nebraska Insurance Information Service. And this is a local trade organization that includes property and casualty liability insurance companies licensed to do business here in the state of Nebraska. As a group, our member companies would write in excess of 50 percent of the personal lines coverage in this state. I have a handout for the committee. LB 60 is a bill designed to impact how overlapping insurance policies will apply to a loss situation. It's pretty

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unique. There is no other statute, no other insurance law in the state that takes a specific business and says how its policy will integrate with another policy in the case of a loss. There's nothing like that. There is one statute that is somewhat similar and I'll talk about that statute in a minute. It relates to our uninsured and underinsured motorist coverage. The issue of overlapping coverage and other insurance is a significant issue. It's been addressed by the courts around the nation many, many times, been examined many times by the Supreme Courts of, I think, most states. The issue has also been studied and examined by the industry. As you can appreciate, there have got to be thousands of situations every day where you have overlapping coverage. Just look at auto insurance. When you drive your neighbor's car you're going to have two policies. If you work somewhere and you have your own personal car there but the employer says, take the company car and go get a box of widgets. You have two insurance policies that are going to apply if there's a loss. Rental cars, test driving cars, dealer loaner cars, there are just numerous situations where this can come up. What do we do about all this? Well, the first way to deal with it is to look at the contract and insurance companies have done that. If you look at a personal auto policy, they all have a clause dealing with other insurance. It's found in the conditions section of the policy. Some of these other insurance clauses will state that the policy is primary. Some will say it's excess. Some will say we'll prorate the loss based on limits. Some contain no liability clauses. Some even contain something called a super escape clause so there are numerous ways that each individual contract might want to approach the issue of overlapping coverage. It isn't always that each has the same kind of clause but what if they do? How do you resolve that issue? The Nebraska Supreme Court looked at that issue and they looked at it in the case that was mentioned earlier, the State Farm v. Cheepers Rent-A-Car case. And in that case, we did have two liability insurance policies and essentially both policies, as the court looked at it, contained excess liability clauses for each excess, the same thing. What do we do? Well, here's what the court said and on page 2 of my prepared testimony I paraphrased that language in that opinion. When you have two liability policies, one insuring the owned auto and one insuring the driver, both with excess clauses. Just a little bit down from the top it's quoted, "It is a well-established legal

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principle in Nebraska that when (auto policies both contain excess other insurance clauses) the owner's policy (i.e. the policy covering the vehicle) provides primary coverage and the driver's policy provides excess coverage." And you'll see they cite a long list of cases. That's the essential basic rule in Nebraska. The same rule applies not only in this case of a car rental company but it would likewise apply when you're driving your neighbor's car. You're driving your neighbor's car, you're insured with State Farm, the neighbor's car is insured with Farmers Mutual. You run into somebody. They sue you. Well, the policy insuring the car is primary and your policy as the driver would be excess. If the facts are reversed and the Farmers Mutual policy is on the driver and State Farm is on the car, then in that case State Farm is primary and we're excess. It's just going to depend on the situation. Beyond that, why would it be this way? Why would you say that it ought to be the owner's car first? Well, that raises another part of what the industry has done and the industry met, as a group, I think it was in the fifties, and they're looking at this issue. You've got all kinds of situations where various policies apply and they're trying to figure out a way to establish guidelines that everyone can follow so that we're not sitting in court all the time trying to figure out what to do. The end result of the industry's work is attached as an exhibit to my prepared remarks. It's called the guiding principles developed in 1963, used it ever since. One of the essential principles of this document is what the industry established as they said, look, what we're going to do when there are various policies, we're going to take the policy that insures the specific and make it apply first. Policies that insure on a general basis will be applied down the road. That principle is what fits with the automobile situation. The policy insuring the specific, that is the car involved in the accident, applies first. The policy of the driver, which could conceivably apply to any car the driver gets into, is...that coverage is general, not specific to that car, so it's excess. The courts have followed the guiding principles which the industry established a long time ago. Getting back to Nebraska law. I mentioned that we didn't...we don't have anything quite like this. The only law that touches on it is in the underinsured motorist coverage and they look at it. How shall we apply uninsured, underinsured motorist coverage when there are multiple policies? Well, they follow the

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same principle. It applies...the policy insuring the vehicle goes first; other UM UI coverage is second. So from my perspective the certainty is what we have right now and to provide a specific exception for one business creates the ambiguity and the uncertainty. There was some discussion about who wins and who loses in terms of costs and what will go up and what will go down. Well, all I can come up with is you're looking at accidents that happen in rental cars. That's the risk exposure. Now the loss costs associated with those accidents are going to be there no matter whether you make the rental companies pay first or the personal insurance of the driver pay first. The loss costs don't change; the costs don't go away. So from my perspective it's an issue of where shall we put these loss costs? Where do you want them to go? What's good public policy for the state of Nebraska? Is it better to have the loss costs over here with the business? Is it better to transfer those loss costs over here to personal auto policies that individuals might buy? Difficult to quantify those costs. I have no idea what they might be, but I think that's one of the fundamental things plain in this issue. It was mentioned that well, gee whiz, we have the opportunity to underwrite this and examine the risk. We're the auto insurance company. We can look at this. The poor rental car company, the individual comes in, gets their car. They don't have the same underwriting opportunities. I disagree, I strongly disagree. In fact, our company and I think it's true with most personal lines auto writers, our agents have binding authority. They can bind the coverage over the telephone with someone that needs coverage. We never see them. There's no opportunity to underwrite that and figure out ahead of time whether we want it or not. The agent can sit at the local cafe and write out the VIN number of the car and the insured's name on a napkin and bind coverage. We're on it. We don't see them. Now sometimes we can, but in many cases we don't. That's just part of what insurance is about and it has to work that way. After all, you couldn't buy a car, you couldn't carry on your transactions if everyone had to wait around until everyone examined you and did a complete search to see whether you're worth insuring or not. So I don't see that as a basis for going one way or the other on the issue. With that, I'll conclude my remarks and be happy to answer any questions.

SENATOR REDFIELD: Thank you. Are there questions? Yes,

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Senator Flood.

SENATOR FLOOD: Thank you for your testimony. This will be brief, but because we're not amending or repealing a section of statute here, and in fact creating an act with regard to who's a priority and who's secondary, by operation of contract law, could we allow the rental companies to contract with the renter as to who is the primary and secondary after they provide a copy of their car insurance? Notwithstanding anything or any of the case law, wouldn't contract law allow a renter to contract with a rental company?

JIM DOBLER: That's a very good point and I think that possibly might work. Now the way I see it is the Cheeper rental car case, all it said is if the rental company has a policy and the driver has a policy, rental goes first. As I think someone mentioned, that case said, we're not going to answer the question of how it works when the rental company is self-insured. And I think that gets at what you're saying, if the rental company has no policy and by contract it wants to say you're first and if the rental company does nothing other than self-insure, their argument is, we don't have a policy. There is no policy. Therefore, the excess clause of the auto policy has nothing to be in excess of. But those issues, at least as I understand it, as I read it, haven't been resolved in Nebraska. I don't think there's been any case that's looked at that specific thing. But it may be a way for rental companies to essentially get to the result they want. I hope that helps but that...

SENATOR FLOOD: I appreciate that. Thank you.

SENATOR REDFIELD: Senator Langemeier. No? Other questions? Thank you for your testimony.

JIM DOBLER: Thank you.

SENATOR REDFIELD: Other opponents?

KORBY GILBERTSON: Good afternoon, Senator Redfield, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America whose

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members write approximately 45 percent of the property and casualty insurance in Nebraska. I'd first like to echo what Mr. Dobler spoke about and I'm going to try not to repeat any of it. I was listening during the proponents' testimony and there was a couple of issues that came up that I thought were relatively interesting. One of them Senator Flood expanded on when he asked whether or not the cost of renting a car would drastically be reduced or be reduced at all if this type of legislation passed. And so then I looked back in my notes and I saw that he said that Iowa operated under the same rules that would exist if LB 60 was passed. So I left the room for a quick second and called my office and had someone get on-line to check how much it cost to rent a car in Lincoln, Nebraska, tomorrow for one day and how much it costs to rent the same car in Cedar Rapids, Iowa, for one day tomorrow. And I was surprised but it was 99 cents difference. So I'm sure that they will argue that there were other costs that are related to that and that's why the costs aren't that much different but it was \$34 in Cedar Rapids, Iowa, and \$34.99 in Lincoln for tomorrow so that, I thought, was very interesting to see there wasn't that much of a difference. The second comment that I thought was very interesting was Ms. Faulconbridge's comment that there is such a remote chance for an accident to happen, it's not worth asking for the insurance companies when they're asking their drivers that have insurance for them. I thought that was interesting because if it's so remote that an accident is going to happen, why then does it cost 35 percent more for them to insure the rental car companies here? And I think that's just a question to leave you with. And, again, we are in opposition to this bill. I think Mr. Dobler did a very good job of explaining all of the intricacies and I would just like to echo those again. Thank you.

SENATOR REDFIELD: Thank you. Are there any questions?
Thank you, Ms. Gilbertson.

KORBY GILBERTSON: Thank you.

SENATOR REDFIELD: Are there any other opponents? Any neutral testimony? If not, we will close the hearing on LB 60 and I'll return the chair to Senator Mines.

SENATOR MINES: Thank you, Senator Redfield and thank you, everyone, for being patient. This is...gees, we've been

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going quite a while on a couple of bills and we are now going to open a public hearing on LB 73. Senator Aguilar from Grand Island is the primary introducer. Welcome, Senator Aguilar.

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SENATOR AGUILAR: Thank you, Senator Mines, members of the Banking, Insurance and Commerce Committee (sic: Banking, Commerce and Insurance Committee). My name is Ray Aguilar. I represent District 35, the city of Grand Island. I refer to that as the "sandhill cranes district." The goal of LB 73 is to guarantee consumers a choice of auto body and glass repair shops for reasonably-priced repairs without suffering a financial penalty from their insurer. This bill is patterned after a California law addressing this same issue. Nebraska law allows an insurer to use the lowest bid on like kind and quality parts for repairs. In some cases, this focus on lowest bid is used to accept less than the original intent of like kind and quality. LB 73 specifically asks that an insurer not recommend any particular repair shop unless a referral is requested by the claimant or the claimant has been informed of the right to choose their own repair shop. If said disclosure takes place orally, LB 73 asks for that disclosure to be followed up with a written document mailed to the claimant. LB 73 would prohibit an insurer from asking a claimant who has already chosen a repair shop to select a different repair shop. Any insurer that by policy suggests or recommends a motor vehicle be repaired at a particular automotive repair shop shall (A) prominently disclose such contractual provision at the time the insurance is applied for, and (B) if the claimant elects a shop of his or her own choice the insurer shall not limit or discount the reasonable repair costs based on charges that would have been incurred had the vehicle been repaired by the insurer's chosen automotive repair shop. Constituents of mine and others from around the state are here to tell you about the abuses they see in the glass and auto body industry relating to insurance coverage. As well, the insurance representatives are here to tell you how well they think the current system is working. I ask you to listen to both sides of the story, but to keep the consumer at the top of your priority list. If the consumer comes first, I certainly think a disclosure

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of affiliations with repair shops is appropriate and I think the consumer deserves their choice of repair shops. I ask for your support of LB 73 and I'll try to answer any questions that you may have.

SENATOR MINES: Thank you, Senator. Committee, do you have questions of Senator Aguilar? Senator Redfield.

SENATOR REDFIELD: I do have a question. There are a number of different issues in here and certainly choice is something that in America we prize. But I do have a question about the arrangements that an insurer may have with certain providers. We see that in the health industry that an insurance company may set up preferred providers who agree because of the steerage to deliver services at a lesser price. That usually saves the recipient some money perhaps in their deductibles as well as the insurer industry. And so I'm wondering if in this last portion that you were explaining if that would prohibit that kind of agreement within the PC industry.

SENATOR AGUILAR: Well, we hope not. But an indication in most cases with shall I say the good players, that is never a problem. But there aren't all good players out there and they don't all service in a like kind and quality manner, and that's where the problem exists.

SENATOR REDFIELD: Okay. Thank you.

SENATOR MINES: Any other questions of Senator Aguilar? Thank you, Senator.

SENATOR AGUILAR: Thank you.

SENATOR MINES: We're going to open it up to comments. Proponents, opponents, and neutral. I would like a show of hands of those in support of the bill, please raise your hands. Holy smoke. I see 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 proponents. Those in opposition of the bill? I see two. You're outnumbered (laughter) and those in a neutral capacity? Okay, in the interests of time, everyone will have an opportunity to speak. Please, we are going to be done with the proponents by a quarter of four, that's 45 minutes, maybe a little longer. Please limit your

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comments to about three minutes. Pay attention to those in front of you. Repetition will harm your case more than it will help so let's begin. I'll keep track of time; you just give your testimony. And please be aware that there are 28 behind you. Let's start with number one of 29 proponents, please. Please come forward, state your name and spell it for the record.

NORBERT ZAENGLEIN: Senator Mines, members of the committee, thank you for giving us the opportunity here to testify in support of LB 73. My name is Norbert Zaenglein spelled Z-a-e-n-g-l-e-i-n and I'm the executive director for the Nebraska Auto Body Association and I'm also a registered lobbyist for the Nebraska Auto Body Association. I know that the Legislature is probably looking at well over 700 bills this year and over the next few minutes I would like to explain why I believe LB 73 is worthy of your attention. Hopefully, will be the priority bill and go on to the floor and ultimately be codified in the law. Much of the testimony that you're going to hear from me and probably from other proponents today will center on the topic of automotive windshield replacement. And the reason for focusing on automotive glass is not to imply that the problem is limited to this particular segment of the industry. It's well beyond glass but would focus on glass because this is the area where the most compelling evidence has been collected, evidence that points to a failure of the current regulatory system to detect, recognize, respond to, and correct problems in the marketplace. Automotive glass, we often think of glass as being a very brittle substance, but the fact is that automotive glass provides two very important safety functions. And first is, it provides the necessary backstop in the event of an airbag deployment. When that airbag deploys it pushes up against the windshield and that windshield then provides that support for the airbag. Without that support or without a properly installed windshield, that airbag pushes the glass out and reduces the safety characteristics of that vehicle, and even to the point of where an unbelted occupant could be ejected from the vehicle. The second reason why glass is so important, that's part of the structural safety characteristic of the vehicle that prevents the roof from collapsing onto the occupant when that vehicle is engaged in a rollover. Again, this seems somewhat counterintuitive because we often think of glass as a very brittle substance.

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But automotive glass is specialized glass and it has a lot of strength and does provide a lot of support in the event of a rollover. I believe...and another reason why we focus on glass is that the evidence that has been documented by Mr. Rizzi, who owns an independent glass shop in Alliance, is pretty overwhelming. I think it's been meticulously documented. I think it's been carefully documented and I think it reflects a problem in the marketplace. And Mr. Rizzi has through his shop over the past four years documented over 250 instances of improper glass repair and/or replacement. Now you might ask what's the shop's responsibility in this? In other words, if there is a problem in the marketplace as demonstrated by the evidence what is the shop's responsibility? Well, Nebraska law makes the insurer responsible for that repair. Specifically under chapter 44-15 (phonetic) (sic: chapter 44, article 15) and 40(15) (phonetic) (sic: S44-1540(15)), makes it an unfair claim settlement practice for failure to adopt and implement reasonable standards to ensure that the repairs are performed in a skillful manner. Furthermore, Title 210, chapter 60, paragraph 009.04 (Dept. of Insurance Rules & Regulations) states that the estimate prepared by or for the insurer must be reasonable, in accordance with policy provisions. So we have two points here that put the responsibility for that repair onto the insurer. And the problems that have been documented by Mr. Rizzi seem to me that they point to the fact that no one is checking the repairs from the network shops, those shops that are in the network that the insurer steers claimants to. And by not checking, the insurer accepts sanctions, approves, encourages the work that is being done. And steering is a means of pressuring shops to reduce, less, and limit the repair costs in a manner that's not based on free market competition. Steering creates an environment that tacitly promotes imperfect repairs and if left to continue, these practices will increase the number of Nebraska motorists driving vehicles that may be unsafe. And what you have to remember here, this is not the first time that we've tried to address this issue. We have presented this to the Nebraska Department of Insurance and they have taken the position, if my recollection is correct, that when someone comes to the Department of Insurance with a complaint it has to be the claimant. When we as an association present credible evidence for a problem in the marketplace, I guess I would say our position is not really valued or taken

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seriously. They do want the claimant to come forward and herein lies the problem. When a claimant has a windshield repair, needs a windshield repair and he calls in and the insurer tells him to use a certain shop or drives that repair through a network the claimant is at home or at work. The glass shop shows up at...it's very convenient. They replace the glass. The claimant had a cracked windshield and dirty glass and he now gets into his car and he sees a brand new windshield. It's clean and he has...the claimant doesn't know whether or not that glass has been restored, replaced to factory specification. The consumer doesn't know whether the glass has been replaced using proper adhesives, has been allowed adequate cure time as specified by the adhesive manufacturer, whether or not existing corrosion in that windshield area have been treated, or whether or not the glass was installed within acceptable temperature and moisture requirements, and whether or not the newly-installed glass compares to the original in terms of fit, performance, and function. The other part of the current glass claims settlement practices is that the insurers or networks seem to be able to drive the cost that they will pay for the repair. In other words, this is no longer a free market competition, but it's one where the insurer or the network are able to influence the price of repair in a manner that's inconsistent with established vehicle estimating systems. And these estimating systems were developed with the insurer's input to provide an independent area in order to determine what's required to repair certain vehicles. So we have these independent estimating system, but for some reason when it comes to repairing the vital safety systems the insurance or networks disregard that estimating system and develop a price all of their own. And I think this is what's responsible for really lowering the quality of repair that's being performed in Nebraska and leaving a lot of claimants not receiving the coverage that was promised in the policy. Steering is everyone's problem and if not addressed, the problems heretofore documented in glass are going to spread to other areas including collision repair and other homeowner policies. The Legislature and the law requires motorists to have insurance and I think that if you're going to do that then the Legislature and the laws of Nebraska ought to be sure that claimants are protected and receiving the coverage that was promised in the policy. Thank you.

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SENATOR MINES: Thank you. Questions? Committee have questions? Thank you for your testimony.

NORBERT ZAENGLEIN: Okay. Thank you.

SENATOR MINES: (Exhibit 1) Let's see, for those of you...we have...I'll tell you what, it's 10 after 3 by the clock on the wall. We'll go to 3 o'clock with proponents of the bill. Please remember that you're using time for people behind you. Those of you that just want to show your support, not necessarily testify, I'm going to ask Jeff to pass around our committee form so you can fill in your name and your support or opposition to the bill. Welcome. Please state your name and spell it for us.

MARK RIZZI: Good afternoon. My name is Mark Rizzi, spelling R-i-z-z-i. I own and operate ACR Glass in Alliance, Nebraska. I also do industry research and analysis for two different trade associations, have been featured and have written for several different trade publications over the last several years. I have for several years and continue to host seminars nationally on auto glass installation and on repairing damage caused by poor previous windshield installations and was consulted in-depth by ABC's 20/20 prior to their airing of a segment on improper windshield installations. I have received the Independent Glass Association's national special achievement award for my efforts, an award that has not existed before and has not been given again since. I feel I can state that I am an industry expert and that I can comment on issues taking place not just in Nebraska but also nationally. Thirteen years ago here in the Legislature Nebraska's current consumer choice law was passed. That law was intended to satisfy a single purpose, to protect consumers' right to choose and to stop them from being directed to specific repair facilities. It was intended to ensure that consumers had a choice to an open and fair marketplace for motor vehicle repair. Nebraska entered into the ranks of 37 other states that have passed similar consumer choice anti-steering legislation. Thirteen years have shown that this law has been ineffective and its boundaries of mutual good faith have been and are repeatedly being abused. Consumer steering is a problem nationwide and is the top topic of discussion at many industry association convention seminars, industry legislative efforts, trade publications,

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and Internet discussion boards. It's not a small problem and it's not going to go away by itself. All other states are experiencing similar difficulties. Many have passed new laws. In fact, LB 73 is worded exactly as the law that was passed in California two years ago. We support this wording to show that we are willing to compromise right from the beginning and skips directly to a law that has been already put into the books after compromise. Thirteen years after having first addressed this issue in the Legislature we need to strengthen the consumer choice law that's on the books. You're about to hear from proponents and opponents that are going to tell you some why this change is necessary. I'm going to skip over some of those things and let them speak for themselves on some parts here, I'm going to skip a few things, but you're also going to hear from some opponents that tell you change isn't necessary. In weighing these issues, I'd like you to keep a few things in mind. Again, LB 73 is exact wording passed in California, a state that is much higher regulated in both insurance and automotive repair than Nebraska. LB 73 is the middle ground they reached with the exception of not having any of the stiff penalties of the California law. LB 73 contains the wording that was the compromise reached in the state, again much higher regulated on both insurance and motor vehicle repair. Nothing in this law prohibits insurers from pursuing discounting programs or from pursuing investigation of fraudulent claims. In fact, I believe the state funds an anti-fraud division for the insurers to utilize. We wish there was a place where we could report insurer abuses of consumers. Mr. Zaenglein touched on that. We don't have any outlet. Nothing in this law inhibits insurers' free speech. LB 73 simply states that insurers inform consumers that they have the right to choose. If insurers don't want to be marketed, which is exactly what's happening, when they call to report their loss they don't have to be. Just like they did with the telemarketers reflecting recent national attention and new laws on telemarketing, consumers should not have to be marketed if they call to report their loss unless they wish to be. If the consumer has already chosen a repairer they shouldn't have to deal with marketing attempts that are designed and disguised as part of the claims or claims reporting process. Insurers are free to market their programs outside of the claims process which is how every other business markets their consumers. No business outside of these insurer programs gets a red flag

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of a consumer with intent to purchase. The insurers and networks should not have this unfair competitive advantage, nor should they be able to sell themselves to consumers under the disguise of being a claims handling entity, or confuse consumers with limited rather than full disclosure about coverage benefits in the insurance policy. Attorney General Eliot Spitzer of New York's investigation into the insurance industry has brought widespread attention to the practices of steering consumers based on dollars rather than on the consumers' best interests. We now have a system in place that does nothing to protect consumers, insure proper repairs, or validate that insurer programs are delivering quality to consumers that not only help keep rates down, but ensures that consumers are receiving the full indemnification that they've paid for in the insurance policy. LB 73 levels the playing field and promotes healthy competition based on the levels of quality, price, customer service, and consumer satisfaction that is alive and well in every other industry in the nation that does not have insurer influence. Healthy competition weeds out businesses unable to provide quality services at competitive prices. Right now none of the normal economic checks and balances are in place and consumers are suffering because of it. LB 73 is a step to replace accountability to the consumer where it belongs. We have a photo and video database of nearly 250 vehicles with dangerously poor windshield replacements from our area compiled in only a four-year time span. If any system were in place to monitor quality, it would not be possible for this many cars to have slipped through the cracks. The failure of catching that many cars attests to the dramatic failure of the current system. Nothing in LB 73 should cause insurance rates to rise. There is simply no evidence to back up this threat. This is about an open marketplace to consumers where competition should thrive as it does in any other industry. Open competition for consumers is at the heart of competitive business principles. No entity should have an unfair market advantage by being able to steer consumers especially when quality of repairs isn't being verified. It is simply economically silly to suggest that more open competition among providers will raise prices. It makes no sense. Ironically, I can provide you with occurrences where we assured the consumer and ensure that we were below the insurer's approved pricing only to find the steering attempts escalate. In last year's session of this committee

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you heard three different people testify in opposition to this bill, an insurer representative, a claims handling company representative, and a spokesperson for a national glass company. An insurer gave an opposing reason including the price of postage stamp to send the written notice but failed to admit that the current law already requires them to notify the consumers in writing of the handling of their claims. One claims processing company representative said the proposed legislation was redundant because they were already obeying it. What he failed to mention was that if this was true passage of this law would give them an incredible competitive advantage over the other claims management companies that do not already obey the intent of this law. One glass company cited their practices of training installers with the latest and best installation methods and procedures, a very good thing, but this has nothing to do with LB 73. All three cited one universal statement that price does not affect quality. I sat in near total disbelief at this statement because in no normal economic situation could this possibly be true unless you tilt the system and remove the verification of quality from the equation. Again, I have personally documented nearly 250 vehicles with dangerously poor windshield installations and only from a small segment of the state in my geographic area. My contacts around the nation through the seminars I host and the classes I teach tell me these are not isolated cases. LB 73 places the quality verification back into the economic formula, but again should not cause rates to rise because insurers will benefit from reduced exposure risk caused by poorly repaired consumers' vehicle safety systems. The consumer benefits from LB 73 by creating healthy competition in an open marketplace that is based on the right to choose. The insurer benefits from competition that is driven by quality, price, customer service, and customer satisfaction. Senator Loudon, we have nearly 30 consumers that are willing to recount their experiences over the issues that LB 73 addresses. It proved to be logistically impossible to get them all or even a few of them to Lincoln today with only a week's notice of this hearing. All but a few were unwilling to file complaints with the Nebraska Department of Insurance when handed the complaint form but had no hesitation about speaking to you. Others were unwilling to pursue any complaint medium even though they fully realized they had valid complaints. Some stated clearly that they feared repercussions from insurers as the

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reason.

SENATOR MINES: Mark, are you about done?

MARK RIZZI: Yes, I am. This alone should alert us to the magnitude of the existing problem. It's time to put choice back where it belongs, back into the hands of the consumer, back where the current law was intended to keep it. I urge you to pass LB 73 and restore true competition to the marketplace and allow Nebraskans to choose where to get their vehicles repaired.

SENATOR MINES: Thank you.

MARK RIZZI: My apologies, Senator Mines, for exceeding the three-minute limit but I traveled an awful long ways to be here and I've...

SENATOR MINES: And I...

MARK RIZZI: ...got a lot of data to give you that, beyond this.

SENATOR MINES: ...I gave you deference. Last year you provided great information and you have driven an awful long way so I kept that in mind. Members of the committee, do you have questions? Senator Louden.

SENATOR LOUDEN: Yeah. I want to thank you for coming that far, Mark, and, yeah, I realize there's a lot of people out there that would testify and don't know how to go about it mostly because they probably don't know the process. But I want you to assure them that my phone is always working and so is my e-mail and any time they want to call me, why, it will be a private matter and it will not be discussed with any insurance agencies unless they so desire. But anyway, I want to thank you again for coming out here because I've known you for about all your life so I know what you're all about when it comes to glass and that sort of thing.

SENATOR MINES: I want to thank you for not bringing them, too (laughter). Any other questions for Mark? Senator Redfield.

SENATOR REDFIELD: Mr. Rizzi, I'm looking in the bill for

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the language that you referred to about marketers and I'm assuming that it is contained in the fact on page 3, subsection 3 says that once someone has made the choice the insurer shall not recommend that the claimant select a different automotive repair shop?

MARK RIZZI: Correct.

SENATOR REDFIELD: Is that the only language?

MARK RIZZI: That and the written notification of the right to choose.

SENATOR REDFIELD: But that wouldn't actually prevent them from getting calls on the phone or there's no penalty for a telemarketer or anyone else that might call them.

MARK RIZZI: Well, they're not cold calling. The only marketing that's being done is when the consumer calls in to report their claim. They don't have to telemarket consumers because they immediately know when the consumer has an intent to purchase.

SENATOR REDFIELD: How would we verify that that phone call that they received was actually coming from the insurer?

MARK RIZZI: No, the insured is calling into the insurer to report their claim. At that point is when they're being marketed. Sometimes the people answer the phone aren't even the insurance company, but they answer the phone as the insurer.

SENATOR REDFIELD: But this is after the claimant has chosen an automotive repair shop so first I call my insurance company,...

MARK RIZZI: Right, they give you...

SENATOR REDFIELD: ...I report an accident...

MARK RIZZI: ...then they give you a 1-800 number to call.

SENATOR REDFIELD: ...and so I may not have even selected anyone.

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MARK RIZZI: True.

SENATOR REDFIELD: By the time I do select one then you're concerned about them getting phone calls, letters, notices, marketing efforts to get them to change their mind?

MARK RIZZI: They're getting those phone calls, marketing efforts to change their mind while they're filing their claim. They're being put...they're insinuating heavily that it is part of the conditions of their insurance policy that they go to the member shops in the system...

SENATOR REDFIELD: But it's...

MARK RIZZI: ...long before price is ever considered.

SENATOR REDFIELD: But it's after they have chosen their...I mean, I'm just saying the wording here only protects them after they have selected another repair shop.

MARK RIZZI: Correct.

SENATOR REDFIELD: Okay.

MARK RIZZI: Correct. Because if they haven't chosen then, and they want suggestions, they're free to give it to them.

SENATOR REDFIELD: Then on page 6 we're striking a whole section that was added to the unfair claims settlement practices (Unfair Insurance Claims Settlement Practices Act)...

MARK RIZZI: In 1992.

SENATOR REDFIELD: ...and it actually takes out the language on like kind and quality. Is that really the issue, how to guarantee like kind and quality?

MARK RIZZI: It would be nice if someone...nobody's actually checking right now. You can have a host of things that are installed in a customer's car. There's a host of windshield manufacturers out there that all follow and meet to what are called the federal Motor Vehicle Safety Standards. These are somewhere between a 30- and 35-year-old standard that was all written before we ever had windshields installed

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structurally, helping to support the roof, helping to actually...not helping but holding airbags on passenger side airbags and the windshields are the backboard for the passenger side airbag. When the aftermarket people make these windshields they are held to that 35-year-old standard. The trouble is, the car manufacturers are exceeding that standard by leaps and bounds. We need to worry about what the car manufacturers are doing and follow their standards and these aftermarket parts and a lot of these cheaper windshields that are being put in, we have no crash testing to support that they're equal. No one does.

SENATOR REDFIELD: So we'd be taking out the like kind and quality language and we would be replacing it with the language on page 2 which says that they would cause the damaged vehicle to be restored to its condition prior to the loss so they would have no option but the OEM equipment, correct?

MARK RIZZI: Not necessarily.

SENATOR REDFIELD: Would that...

MARK RIZZI: Sometimes in many cases the consumer and many of my customers have accepted what we call a B-brand windshield. I also feel there are C and D brands. Some consumers accept those lower prices. Many times the consumers accept them in order to save the insurance company a buck because they admit it's an older vehicle.

SENATOR REDFIELD: And I've had older vehicles my children have driven...

MARK RIZZI: Um-hum.

SENATOR REDFIELD: ...and there was a reason to do that.

MARK RIZZI: Sure.

SENATOR REDFIELD: But I'm wondering if this language would prevent that because if we're saying they have to restore it to its condition prior to the loss...

MARK RIZZI: I believe most policies say that already.

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SENATOR REDFIELD: ...then, in fact, would they not be locked into an OEM?

MARK RIZZI: Well, it depends on what's in the car originally. If the car has an original equipment one in it, yes, I suppose you would...

SENATOR REDFIELD: So the consumer would not have the option of putting the lower-priced...

MARK RIZZI: No, the consumer can do anything to his car he wants. The insurer doesn't have the right to tell the consumer how to fix their car. The consumer can do anything they want as far as what they want put in.

SENATOR REDFIELD: But our language here...

MARK RIZZI: It just says they can't settle the claim based on something.

SENATOR REDFIELD: The language here wouldn't give them that choice. It says, we will cause the damaged vehicle to be restored to that condition so I mean there...

MARK RIZZI: If they suggest what shop to use, yes.

SENATOR REDFIELD: ...I'm just wondering where you want it to end up. Okay.

MARK RIZZI: Yeah, if the consumer basically...if the consumer accepts the choice...the suggestion of the insurer on where to go then they should also be disclosing the discount agreements they have there, but at that point if they suggest to the consumer where to go to get their car repaired because this is the member shop, then yes, the insurer should cause the vehicle to be put back to pre-loss condition because they've obviously entered into the pricing game. They should bear some of the liability, but that goes right along with laws we already have on the books which is 44-1540 sub paragraph 15.

SENATOR REDFIELD: But if we're going to give the consumer choice and I believe that they should. There are times when I want OEM; there are times when I don't.

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MARK RIZZI: Right.

SENATOR REDFIELD: And if I'm going to use someone that's not recommended by the insurer then I would like to make a choice and if I do use someone recommended, I would still like to make the choice...

MARK RIZZI: Right.

SENATOR REDFIELD: ...and I think we would have to adapt this language some way so that they would still have a choice. I don't think they would under this language.

MARK RIZZI: I think the consumer still has the full choice on there to what repairs are done to their car. I think the only language and only choice that that limits is the insurers to use the cheaper parts when they don't have anything to base the difference on.

SENATOR REDFIELD: Well, we could fix that. Thank you.

SENATOR MINES: Mark, before you leave, the real point that I see in this is on page 3(b), says if the claimant, so if the claimant elects to have the motor vehicle repaired, so I need a windshield, I elect to have the windshield repaired at the automotive repair shop of my choice; let's just say it's your shop, but the insurance company says no, you need to go to Senator Pahls' shop to get it fixed because we've got an agreement and we know what it's going to pay. You could also have that agreement. Is that correct?

MARK RIZZI: Yes.

SENATOR MINES: You fix it for the same price.

MARK RIZZI: Yes.

SENATOR MINES: And I say, no, I don't want to go there. I want to go to Mark's shop and you're \$10 higher and the insurance company says, Mark, we'll pay you exactly what we pay everybody else and then Mick, you're going to have to make up that difference. Is that kind of the way it works now?

MARK RIZZI: Yes. Only sometimes we could actually be

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less...

SENATOR MINES: Okay. And what this is saying and what...well, let's just say it's more.

MARK RIZZI: Okay.

SENATOR MINES: And what this says is, Mick, you can get it fixed but the insurance company must now pay Mark whatever you decide to charge, that \$10 more and that's at my direction, not the insurance company's direction. Is that a fair statement?

MARK RIZZI: No, I don't think so. Basically, if you're comparing apples to apples there's nothing wrong with the system. But if you're comparing, you know, what you're getting at one shop as the same as what you're getting in the other that's fine. But if...

SENATOR MINES: I'm just saying...

MARK RIZZI: ...if it's \$10 difference...

SENATOR MINES: ...all things being equal, Mark, Senator Pahls' shop, your shop putting in the same glass. Senator Pahls agrees with the insurance company that they'll replace it for \$400.

MARK RIZZI: Um-hum.

SENATOR MINES: You're going to charge \$410, but I want to go to you because you're a good guy and I know you do good work.

MARK RIZZI: Okay, okay.

SENATOR MINES: This tells me and tells the insurance company that they must pay \$110 (sic: \$410) to you because I choose to go to you? That's what this tells me. And I have a problem with that.

MARK RIZZI: I don't...

SENATOR MINES: If in fact that's what it's saying and that's to me what it says. So all things aren't necessarily

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equal.

MARK RIZZI: I'd have to check back and see how that's exactly worded but...and I guess I understand where you're going. No, there is no license to kill in here. They still have the right to go back and look but it would force them to take a look at what's being included in the bid and what's being done to the customer's car. You know, I can be underbid on numerous occasions by that \$10, but somebody's putting in a windshield that cost half as much as the OEM...

SENATOR MINES: That's not my concern.

MARK RIZZI: Who's checking?

SENATOR MINES: I'm...well, I think I know...

MARK RIZZI: Well, depending...yes, it is because if they're the same price they have to find out what's being done.

SENATOR MINES: ...what this is saying. You're comparing equipment and I'm just comparing repair. I don't know glass from glass...

MARK RIZZI: Neither does the consumer.

SENATOR MINES: ...frankly doesn't...I've had windshields put in, doesn't bother me.

MARK RIZZI: Um-hum.

SENATOR MINES: I don't know what's being put in, assume it's good stuff.

MARK RIZZI: Um-hum.

SENATOR MINES: But if Senator Pahls and you have the same, all things being equal, why should the insurance company be forced to pay you a higher rate than it would someone else that would do the same thing? And if that can be fixed, that's a different...doesn't matter.

MARK RIZZI: Training. Okay. Oh, it does.

SENATOR MINES: A deal's a deal. I mean, he's certified,

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you're certified, the world is certified.

MARK RIZZI: Well, if you put everything on an equal basis then I would agree to an open market survey like was done in Minnesota. That has never been done.

SENATOR MINES: Okay, thank you.

MARK RIZZI: So.

SENATOR MINES: Thank you. Other questions? Okay, folks, we're 30 minutes away. Let's...and you testify and I'll keep track of the time. Thank you.

PATRICIA HANCOCK: I'm Patricia Hancock, P-a-t-r-i-c-i-a H-a-n-c-o-c-k. And my husband and I own Bob's Body Shop in Grand Island, Nebraska, and I'm also here as a consumer. And I'd like everybody to please bear with me. I had an unfortunate accident on Friday and my tongue and the retainer that I have are not programmed together for my correct speech. So I have written my presentation and hope my tongue and everything will work together until I learn how to use my mechanism (laugh). Passing of LB 73 is extremely important for Nebraska consumers because this law would allow consumers to exercise their American freedom and right of choice. Presently, the consumer has little or no choice concerning the repair of their damaged vehicle. As soon as the consumer reports their accident the agent, call center, network or adjuster forces, coerces, or compels the claimant to use the insurance company's preferred shop. Bob and I chose not to sign contractual agreements with insurance companies because Bob's Body Shop's mission is to perform proper repairs and to restore our customer's vehicle to pre-accident condition using methods and standards that are higher than those often settled for by the insurers. Since our collision repair shop is not in contract with any insurance company our shop and our customers experience many of the misleading statements which create doubt and fear in the consumer if they were to select a facility not on their insurance company's list. Bob's Body Shop's customers have been suggested to misleading statements by their insurance representatives. Now these are some of the statements and when I use the word "our" here, I'm not making reference to our shop. I'm making reference to what the insurance company is saying as the preferred shop. These are exactly

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some statements that have been told to our customers. "Selecting one of our preferred shops guarantees rental car coverage." "Our shop, again the preferred shop, offers warranties, we don't know if your shop does." "Our shop is the only one certified." "You can select that shop but that's why your premiums are high." "We can start work immediately if you choose one of our shops." "You'll have less hassle and paperwork if you use our shop." "If more damage is uncovered during repairs or a supplement is needed and you use a shop other than our shop you won't pay for additional." These are statements that are being used. Such misleading statements create fear and doubt and cause the customer to wonder if they will have to pay higher premiums or pay higher repair costs if they use a shop that is not on the insurer's list. Once these fear factors are suggested, the consumer no longer feels confident about selecting a repair facility that is not on the insurance company list. We have a perfect incident to exemplify the severity of this. A medical doctor's 16-year-old was in an accident after school. By the owner's request, this vehicle was towed to our repair facility and we were told to repair the vehicle. Sometime after the accident and prior to the next morning, the doctor reported the accident to his insurance company. The following morning the doctor contacted us and told us he was having his vehicle removed from our shop to another shop. After Bob uncovered additional information, his insurance company's representative had recommended another shop. And since his 16-year-old daughter had hit a boy on a bicycle, he was concerned about his coverage on the accident if he selected to use a shop other than the one recommended by his insurance company. By passing LB 73, the insurance company representative's values are no longer imposed on the consumer. If LB 73 is not passed, the consumer will not have any choices. The glass repair industry exemplifies this. With the development of a major glass network, steering work to a few select preferred glass repair facilities other reputable glass repair facilities lost customers and were forced to liquidate their businesses. The writing is on the wall. This elimination of reputable collision repair facilities is in the early stages of liquidating. For example, our facility's growth for over 35 years has moved from over a million dollars of gross sales a year to half a million dollars worth of gross sales a year just in these past five years. We've also gone from

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sixteen full-time employees to six part-time employees. If consumers were free from fear in selecting their collision repair facility, our gross sales would be higher, our facility would be available as a choice, and we would be able to compete fairly and competitively in the marketplace. Another example where freedom of choice has been lost is selecting a rental car company. In the past, our facility had rental car vehicles available for our customers. Now we no longer provide this service to our customers because one rental car company has contracts with all of the major insurance companies. The consumer no longer has a choice of rental car companies. Another downfall for the consumer of LB...

SENATOR MINES: Pat, would you please wrap up?

PATRICIA HANCOCK: ...yes, I'm almost there, has not passed is the safety of the vehicle after repairs are performed by the insurance company's preferred collision repair facility. Again, Mark Rizzi has examples in terms of the safety. It's only a matter of time before improper repairs can be documented in the collision repair industry. There is no way safely repaired vehicles can be obtained at an unreasonably depressed prices. All the insurance company's savings accomplish is eliminating the number of businesses and the number of choices a consumer has. LB 73 is detrimental in keeping the number of fairly and competitive collision repair facilities available for Nebraska consumers. Please support LB 73 and let Nebraska consumers decide without pressure, fear, or guilt from their insurance company's representative who will repair their damaged vehicle.

SENATOR MINES: Thank you, Pat. Are there questions? Thank you. Please listen to the testifiers before you. We're starting to get a little repetitive and please come forward, state your name and spell it, please.

LYNETTE HARTMAN: My name is Lynette Hartman, L-y-n-e-t-t-e H-a-r-t-m-a-n. I will be exceeding the three minutes but I've got four people that have agreed to give up their time and I'm only going to be going...

SENATOR MINES: Good move.

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LYNETTE HARTMAN: ... (laugh) I'm only going to be going double.

SENATOR MINES: Good move.

LYNETTE HARTMAN: First of all, the concern that you expressed to Mark Rizzi, this is not any different from any other insurance policy. Like kind and quality was originally designed in an insurance policy if the original equipment was not available. It really was not designed to be able to tell them that you can change brands at any time on anything. That's not where it came in from. This is just putting it back into...you might have to do a little bit of investigation, but this is where every insurance policy is. My name is Lynette Hartman and I have come to discuss this bill from many points of view. For years I have administered claims for an insurance company. I have submitted bills for claims for glass shops, body shops, and car dealers. I'm an insurance consultant and public adjuster aiding insureds with their claims and a woman whose own son has been steered. Last year I came to the hearing for LB 849. I came to listen totally unprepared to testify, but due to my unique experiences many people requested I speak. I testified that small shops in small towns across the state need the support of this bill. This hasn't changed. Dozens of small repair shops have closed their doors in the past year and more are expected this year. Although as a legislative body you are greatly concerned with the survival of every small industry in this state and the continuation of the local businesses that constitute the main streets of the small towns across the state, I realize that your greatest concerns must be for all the constituents that make up the population of this state. I'm sure your actual questions are, will this law place an unnecessary burden upon the insurance industry? Would this law increase the cost of insurance? Would this law cause businesses to leave the state? Are Nebraskans being injured by the current situation? And, is this law really necessary? First, will this law place an unnecessary burden on insurance companies? I know from my own experience administering claims for the insurance industry just how easy it is to have a computer automatically generate a postcard any time a CSR checks a box and says, recommended a repair shop. At least 38 states have some type of steering law and as Senator Aguilar testified last year about ten

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have a law comparable to this one. Most insurance companies should already have in place a program in place for dealing with this law in other states. Last year Senator Redfield wondered if the mailed notice would arrive too late and, therefore, be worthless. This is still a state where tremendous amounts of information is shared at the coffee shop, at work, at school events, et cetera. Currently, people are sharing the word that, did you know our local repair shop isn't approved by my insurance company? And not realizing that in many cases they are talking to a glass shop, identifying themselves as their very own insurance company they said if I use our local shop they can't warranty the work. Insureds receiving the information required by this law will share it with others, spreading words of their rights and the follow-up card will prevent over enthusiastic CSRs from verbally steering since they know the insured will be receiving a written notice of information that could cause an insurance complaint to be filed. Would this law increase the cost of insurance? Last year Dan Nordgren of State Farm testified that the average individual has a claim every eight to ten years. Generating a 23-cent postcard to a portion of the insureds every eight to ten years should have no effect on the cost of insurance. Nothing in this law allows repair shops to overcharge. Mr. Nordgren also stated that State Farm believes in the fair and open competition this law encourages. Mr. Nordgren stated that State Farm does not direct price and doesn't ask for cost concessions from any shop. If the insurance companies are currently paying the fair and reasonable prices required by their policies this law should have little impact on a per claim cost. Would this law cause insurance businesses to leave the state? If an insurance business is not prepared to do business in an open claims model that allows consumers free access to all of our taxpaying locally-owned repair businesses perhaps we should let them leave. But the reality is, that the public records show insurance companies in recent years to be making high profits, and that is highly unlikely. Are Nebraskans being injured by the current situation? Last year every person opposing this law made the same statement. Choice does not necessitate quality and cost does not drive quality. Although the highest priced product is not always the highest quality it is often wise to continually strive to find the cheapest deal, especially when dealing with safety equipment. The windshield is an integral part of the

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automobile safety system, providing up to 60 percent of roof support, holding the roof up in an accidental rollover, and providing a backboard for your airbag as you've heard several times today. If the windshield fails in an accident your airbag may be useless. Passengers can fly out, either through the open windshield area or the side, when without the support of the windshield the A pillar collapses and pops the door open. Last year 6,825 people flew out of their automobiles that way. Even more people suffered severe head injuries and death from roof collapse. Yet despite how important the glass is in protecting your safety in an accident, current insurance protocol seeks to look for the cheapest price without considering differences in parts or installation methods. The defense of this is all materials meet DOT standards but the Department of Transportation Standards are a 30-year-old government minimum standard. Both a mobile home and a stick-built home meet government minimum standards for housing. But the mobile home is acknowledged to provide little protection in case of a tornado. According to the 2000 U.S. census the average income for a glass repairman was \$29,644.54. Since then, according to Bud Oliver, director of production operations at NAGS, the suggested list price of the 800 most commonly-used pieces of autoglass have risen less than 5 percent. The wholesale price has remained flat yet during this time period the discounts required by insurance companies has dropped from 10 percent over list to allow for labor to 50 percent off of list. The only way anyone can continue to do this work is by cutting material quality and taking installation shortcuts. George Morrison, the former vice president of claims at Nebraska Farm Bureau years ago told me, just get the glass claims fixed quickly and get them done right. I've paid entirely too many liability and bodily injury claims because it just wasn't handled right the first time. Is this law necessary? Last year Paul McFarland of LYNX Services stated that their model had no incentive to steer because state LYNX Services doesn't repair or replace glass. LYNX Services is owned by a glass manufacturer and charges various fee levels for different types of membership. Even if LYNX Services is able to resist the temptation to steer jobs to shops based on who has paid the largest membership fee or who purchases the most glass from them, they are not the only network in the industry nor do they represent all insurance companies. Other networks owned by retail glass shops have an even

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greater incentive to steer. Body shops have experienced less steering to date, but they are here today because they have noticed a continuing increase in the problem and are concerned about ending up where the glass industry is now. On December 17, 2004, the St. Louis Post-Dispatch stated: "Though a multibillion dollar business the collision repair industry remains competitive and highly fragmented. With 35,200 firms involved in the auto body repaint and interior and maintenance business in 2002, the top four firms represented only 2.5 percent of total revenue and the top 50 accounted for only 7.7 percent, according to the most recent U.S. economic census." By comparison, according to the same U.S. economic census the 50 largest firms in the automotive glass replacement business accounted for 46 percent of sales. Last year Paul McFarland of LYNX Services that they had paid claims to 26,000 different repair shops. This coincides closely with the 2000 U.S. census that registered 26,010 glass repair shops in the United States. Based on these statistics, one in 520 or one-tenth of 1 percent of the glass shops control 46 percent of the sales. My own company truly had no incentive to steer. We did not repair, replace, manufacture or wholesale glass, and related products nor did we have members who had paid various fees. Without steering the top 50 largest glass companies controlled less than 6 percent of sales. One of the most common types of steering is to state that you will lose your insurer's warranty. Although claimants are told the insurer will be guaranteeing the repair work the insurer does not actually guarantee the work. Instead, under these network arrangements the shop is required to perform the work...repair in a workmanlike manner which state common law requires already irrespective of whether they are network shops. And it is the shop not the insurer who guarantees the work. The point, the insurers do not guarantee the method of repairs nor do they guarantee how the work was performed. And this was reiterated in the 2003 Nebraska lawsuit of Williams v. Allstate. The 1945 McCarran-Ferguson Act provided insurance to be legislated at the state level unless the state is unwilling or unable to address the issue. On November 16, 2004, New York Attorney General Eliot Spitzer called for fundamental inquiries into the ethics of an industry that needs to be fundamentally scrutinized, declaring the insurance industry to be fundamentally corrupt, and urging the federal government to turn the industry upside-down. Unless states pass laws to

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protect the public and actively enforce them the states could lose their ability.

SENATOR MINES: Thank you. Questions? Seeing none, thank you very much. Next testifier.

MARK BARTAK: Good afternoon, ladies and gentlemen.

SENATOR MINES: Good afternoon.

MARK BARTAK: My name is Mark Bartak, M-a-r-k B-a-r-t-a-k, and I'm a proponent of (LB) 73. I think we have whipped the steering thing pretty good. But I'm a small business glass owner in O'Neill and when my customers talk to their agent they get funneled into the 1-800 thing many times on the other end that company or network often pretends to actually be that insurance company. This third party talks to them. My customer has to go through a gauntlet of insinuations, half truths, and outright lies maligning my business. Intimidation and scare tactics aren't common, they're standard. I put up with some unreal stuff from people who are completely out of the state and have nothing to do with my customer and my business. They know nothing about me and they just slam me. Now, the questions that my customer undergoes, you know, stuff like does Bartak guarantee his work, does he have insurance? If you go there, we can't guarantee it. You the customer will have to pay the difference, yadda, yadda, yadda, you've heard that. Okay. Not many customers are all that strong-willed to withstand a barrage of questions like this and many cave in. After all, you know, they're walking on eggshells having an insurance claim anyway and they're pretty nervous. My customers should not have to defend my business in order to patronize me. And many of them do. I have a really strong customer base and a lot of them come to me and say, man, what are you doing out here? Like I'm just wild and crazy or something because I'm not conforming exactly to what they want. Now that being said, you put forth an analogy, Mr. Rizzi's glass company, Senator Pahls' glass company, there was a \$10 thing. I can only speak for myself, but if it was like glass and if it was in the same town, I don't think there's any glass company...I know I wouldn't mind competing like that. I think the spirit of LB 73 is to put the distribution of work back to the insured, the customer. Let them go out and pick the shops that they want. I find it to

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be pretty audacious of insurance companies to say, well, so and so in Grand Island has \$400 glass so you up in O'Neill must install it for \$400. If it's in the same town, or even close, I think it's fine and in that spirit of competition I don't think there would be a problem with this bill becoming law.

SENATOR MINES: Stay there a second. Questions? That's the most effective testimony so far. Let me ask you this. Have you signed up...I don't understand the process, but do you sign up with insurance companies? And have you chosen not to, is that?

MARK BARTAK: Yes, I used to cooperate.

SENATOR MINES: Yeah.

MARK BARTAK: I tried hard. I wanted my customers to be able to come to me without a bunch of rigamarole. After awhile, though, the fax machine just kept buzzing and the third parties just kept saying, hey, we just keep laying out these prices and he keeps sucking them up.

SENATOR MINES: Um-hum.

MARK BARTAK: After a while it got to the point where I'm working for next door to free. And I'm doing stuff for big city prices.

SENATOR MINES: Okay.

MARK BARTAK: And I'm a small town cornfield glass company. You know, I don't have the volume. It's not fair. And I'm competing in effect with no one in my area. I believe there's a law that says now insurance companies only have to pay what is fair and reasonable in the area.

SENATOR MINES: And that could include Norfolk, Grand Island.

MARK BARTAK: Let's define an area. I say an area is the area that the actual insured is willing to go and get estimates in. Let's let the insured go get their estimates in their area. Let's let them define the area, not the insurance company saying the area shall be and we once got a

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guy to put this windshield in for this amount of money 200 miles from you.

SENATOR MINES: Great. Thank you. Any other questions?

SENATOR PAHLS: How much competition do you have in O'Neill? I mean.

MARK BARTAK: More than a lot of people would think. All the body shops put in glass and there's a half a dozen mobile units in Norfolk and they come up out of Grand Island. And there's quite a bit of competition.

SENATOR MINES: Thank you, Mark. That was great. Next testifier.

CHRIS HUNKE: I don't have a prepared statement.

SENATOR MINES: Good for you (laughter). Here, here.

CHRIS HUNKE: My name is Chris Hunke, C-h-r-i-s H-u-n-k-e. I am the owner of Cars R Us Auto Body in Omaha. The situation with...the question you had about being able to sign up on programs. Okay. In the Omaha marketplace, with the exception of State Farm which you can get on a program of theirs, which I was, but the costs were prohibitive because I got four jobs in six months. The agents didn't support the program. The other large insurers there do it demographically based on square footage, number of technicians. Body shop A could have 14,000 square feet, equal not. He'll get the program. He won't; they're too close. Okay? Their goals, I'm in the unique situation that I've been a technician in a direct repair shop, a service writer in a direct repair shop, and now a small business independent shop owner. Okay. If I was not diversified in doing restorations and street rods and showcars, I would be one of those numbers that are out of business. Their goals, and to steer the business to those particular shops, are to do 60 percent or more of their business in six businesses to eight businesses in the entire city of Omaha. The steering is a dead horse now. The consumer is what we need to focus on and at the beginning we said, let's focus on the consumer. Okay. As a consumer, you go to one of those shops. Those shops get those consumers, 30 or 40 a month, from three different companies based on strictly facility,

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the contractual agreement. There's no marketing effort and there's no basis of reputation. I have to fix every car like the next one depends on it because it does. These guys, they do a guarantee, but it's repairs done to what's acceptable in the marketplace. It's not, hey, I'm proud of that job. It's let's get it out the door, let's get the next one in. If they complain, we'll fix it. That's the consumer part of it. Then, you know, so the agreement is not the same. I don't have...I have a 4,400 square foot building. I am not even eligible to become a program shop. Even with all...with the exception of State Farm. But even with all of the training, exactly the same amount of equipment, exactly the same employment costs for worker's comp, taxes, the whole works, it's not a level playing field. Okay? And it's, I've got my horror stories about having people taken away from my shop as customers, too. I mean, I didn't even get to fix my own daughter's baby-sitter's car, you know. And when she had a problem, she's went back. They said, oh, that's fine. That's the way it's supposed to be. I told her, tell them Chris Hunke told you it's not right. They fixed it. I don't know. I'll just...that's it.

SENATOR MINES: Great job, Chris. Hold on, just a minute. We may have a question for you (laughter).

CHRIS HUNKE: Oh, any questions?

SENATOR MINES: It's nervous on that side of the table, isn't it?

CHRIS HUNKE: This is my first time. I haven't been to the Capitol building since I was nine (laughter).

SENATOR MINES: You did great, you did great. Do we have any questions by the committee? Well, you did a great job. Thanks for coming in.

CHRIS HUNKE: Another thing, so what happens is you've got the big shops, the big fish. It's...you don't have small town clothing stores, you don't have small town shoe stores. You know, the same thing is happening in our industry. Okay, what's going to happen? I'm already subject to being well, we get a discount from these shops. If you're going to fix the car, I want the same parts discount. Well, I'm

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not the benefit of 40 jobs a month from you. Don't ask for a discount from me. Okay. What's going to happen? This is what's going to happen. The consumers are going to all go to these big shops. The little guys are going to go out of business. The big body shops are going to...right now the insurance companies are doing this, free towing, no markup, free storage, la de da de da. Okay. At some point, the big shops are going to say, or what? They're going to say or what, what are you going to do? Take the business away from us? Where is this business going to go?

SENATOR MINES: I don't know. Mark, thanks for taking the day off to come here and...

CHRIS HUNKE: It's Chris.

SENATOR MINES: ...or Chris, I'm sorry.

CHRIS HUNKE: Yeah.

SENATOR MINES: And the rest of you, thanks. This is really important and I appreciate your sacrifices.

CHRIS HUNKE: Any other questions?

SENATOR MINES: Thanks, Chris. Next testifier.

TROY LAUGHLIN: Good afternoon, ladies and gentlemen of the committee. I appreciate you listening to us. As all of us here today on short notice have taken the time to come here because it is an important matter to us.

SENATOR MINES: Could you give us your name and spell it, please?

TROY LAUGHLIN: Oh, my name is Troy Laughlin, I'm sorry.

SENATOR MINES: Great.

TROY LAUGHLIN: T-r-o-y L-a-u-g-h-l-i-n. I'm going to make it short and sweet. If it's all right, Senator, I'd like to ask you a question.

SENATOR MINES: I'll ask you the questions (laughter).

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TROY LAUGHLIN: Okay. We'll turn it into a different scenario.

SENATOR MINES: Give me your statement and then we'll talk.

TROY LAUGHLIN: Everybody's bought tires for their cars, correct? We know there's a difference between a 70,000-mile tire and a 20,000-mile tire but they look the same. They don't cost the same though. And this is not a matter of pricing. It's a matter of quality. It's a matter of a right for the consumer to choose. And that was the question I was going to ask. There is a difference. We come to you knowing you are the professionals to help pass the laws. You have to rely on us as professionals in the glass industry when we tell you there is a difference between a part B and a part A. We know a part A will hold that airbag in when it deploys and save your life or your child's life. We're not sure if a part B will do that. Is that \$10 worth it to you? I hope so. Thank you.

SENATOR MINES: Questions of Mr. Laughlin? I'm sorry, go ahead. Senator Louden.

SENATOR LOUDEN: Thank you for coming here today and testifying, of course. Anymore like, you know, at one time whenever we needed a new windshield or something why the insurance companies would tell you, well, go out and get three different bids from three different insurance companies and then send it to them and they would choose one or something like that. Does that work today or does that still happen or?

TROY LAUGHLIN: They will say it doesn't but yes, it does, sir. Even now, the insurance industry has definitely changed, without a doubt. Deductibles have gone up. A lot of cases to where they're not even in the glass industry as strongly as they were even two years ago. But we get phone calls even from agents getting quotes for their insureds for a cash price. Hey, I've got Joe Smith here. What's your cash price on it? And we know he's an agent so, yes, they are still doing it. I mean, there's no doubt about it. And I guess I find it sort of suspicious that we would have representatives of insurance companies here today that would not want to see this bill pass because it is for the better choice of their consumer also.

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SENATOR MINES: Other questions? Troy, where are you from?

TROY LAUGHLIN: Kearney, Nebraska.

SENATOR MINES: And what's your?

TROY LAUGHLIN: I am also a director of the Nebraska Glass Association.

SENATOR MINES: Great.

TROY LAUGHLIN: And I run a shop, DMB Glass in Kearney.

SENATOR MINES: Great. Again, thanks for coming in.

TROY LAUGHLIN: Thank you, ladies and gentlemen.

SENATOR MINES: Means a lot, means a lot. Next testifier. And before you start, can I see a show of hands of proponents wishing to speak yet? We've had seven. One, two, three. All right, we'll get through those and then we'll take a break. Please state your name and spell it, please.

GLEN GARTNER: (Exhibit 2) I can't do anything without reading it (laughter). I'm Glen Gartner, G-l-e-n G-a-r-t-n-e-r. I'm from Grand Island. I own and operate Fas-Break Windshield and Auto Glass in Grand Island. There's a couple of things that, a lot of things have been covered here but there's a couple of things that I want to point out and I'm just going to go through and read this. It's a page and a paragraph. My name is Glen Gartner. I live at 516 W. Koenig Street in Grand Island. I own and operate Fas-Break Windshield Repair and I've done so for the last nine years. I'm here today in strong support of LB 73. The bill, I believe, is critical to protect Nebraska insureds' right to choose a quality autoglass repair shop for repairs to their vehicle and thus prevent the extinction of those quality repair facilities. Typically, when an insured calls their agent or insurance company to report a glass loss, a subsequent claim, they are advised to call a toll-free number commonly referred to as a network where claims for such losses are handled. What most people don't know...well, here, I want to state that that requirement

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generally alone is outside of the policy scope of every policy that I've read. And I haven't read them all, but I've read a lot of them. I wouldn't proclaim to have read them all. Policies usually state that as an insured you must advise the insurance company of the loss. By calling the agent or company they have met the requirements of their policy. The real problem arises in the fact that all of these toll-free reporting numbers are, in fact, glass companies that, for whatever reason, the insurance company has chosen to administer their glass claims process through. Steering has already occurred. The insurance company has required you to call a glass company. I will briefly go through what usually happens when an insured calls a glass network. First, the calls are almost always answered by a menu-driven computer system that sometimes identifies the glass company involved, not always. Sometimes it states that the insured can choose any provider they would like to repair their vehicle. Then after the proper menu prompts connects the caller with a person to take the loss information and will sometimes ask the insured if they have a preferred provider they wish to use. If they do, at this point, the insured is usually placed on hold and a call is made to that provider. The provider is advised of the predetermined pricing that is required for this job assignment, for them to assign the job to you when it's already your customer that's requested your shop. If the provider refuses to accept the pricing, the call with them is terminated and the network has refused to connect the insured's requested provider with them. The insured is then told something to the effect of that provider doesn't work with us or you've heard all of the...we can't guarantee their work, blah, blah, blah. An attempt is made to steer or direct the insured to a provider that is willing to match the required discount. If the insured should persist and demand to go to their first choice of providers they're almost always told that it is their choice, but if you use that provider, and here's where the problem, a lot of it is, you may be responsible for a portion of the cost yourself. This is almost without exception, not in the insurance policy language. It's not in the policy that the companies have put forth and said right in it, this is the only agreement between you and I. It doesn't say that you must pay a portion of the cost yourself. It seems like a subtle and ambiguous statement, but it is very powerful and it is steering. It also leads to discount repairs and

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replacements that sometimes use substandard parts and unsafe techniques. I believe strongly that LB 73 is a step in the right direction to prevent these types of abuses. I've also chosen to provide with this statement documentation of the very same type steering statement made in a letter from Farmers Mutual of Nebraska to one of my clients. A copy is attached to the back of this statement. The letter was provided to me by the client. The second attachment bears witness to another problem that I hope LB 73 will correct, that being the refusal of the Nebraska Department of Insurance to act on complaints received from a third party claimant. I believe section 1, item 5 and 6 will help to clear this problem. Please find also attached a letter that I received from the insurance director refusing to act on my complaint and requiring that a complaint be filed by the insured. Again, I'm encouraging the committee to fully back LB 73 and push for its passage into law. Thank you.

SENATOR MINES: Thank you, Glen. Nice job. Questions? Seeing none, thank you. Thanks for coming in. Next testifier, Mr. Triptow. Now here's a guy I wouldn't touch...no, you run a nice operation.

RICH TRIPTOW: Yeah.

SENATOR MINES: Welcome.

RICH TRIPTOW: (Exhibit 3) Good afternoon, committee. My name is Rich Triptow. I am the owner of Omaha Glass in Omaha, Nebraska. It's Rich, R-i-c-h Triptow, T-r-i-p-t-o-w, and I really want to address one specific area. First of all, I would like to echo, number one, what Mark Rizzi said about inspection. I've been in this business over 20 years and I have never had an insurance company, or representative, or an adjuster, or their designated network administrator ever come into my shop at any time...and I'm not aware of any even my colleagues of ever having anybody come in and do any kind of inspection on the quality of work, the quality of glass, the quality of the installation, and it goes back to your comment, Mr. Mines, is that you have this assumption that all glass is, the myth that glass is glass. And it is a mundane product, it really is. And so I could see where the common person could be aloof in their attitude that all glass is the same. And us being glass professionals, we know it isn't. I'd like to address

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one aspect of it that since a year ago I talked here. An insurance company very familiar to many of you here, they have a federation office in every county, as well as financial service offices in every county that changed network administrators over a year ago. And that's Farm Bureau of Nebraska, Nebraska Farm Bureau, a very, very good company and over 20 years I've always had a wonderful relationship with their claims department, their agents, and their policyholders. But in the fall of 2003 they changed glass administrators from a very generic, a very open system even though it was a set program to a specific administrator that also happens to have glass shops in the state of Nebraska. It's kind of like the fox watching the chicken house. And in one year I have information to show you that I've gone from two to five jobs per week, to two to five jobs per month because the notice of loss is being answered directly by the glass supplier or by his network administrator under the disguise of, we've called this number many times ourselves. They answer the phone, thank you for calling Farm Bureau Glass Program. And they kind of give the assumption, and when you as a consumer or the consumer only has a glass claim once every seven years and following an 800 number, you're under the assumption that you're following company policy. And I know that there has to be some sort of receptiveness when you enter into a contractual agreement with an insurance company that you're going to work with them to solve claims and problems. But that doesn't mean you necessarily have to forfeit all your rights to pick other good repair facilities and that's kind of what we're asking for is that...I know last year State Farm came here with their administrator, LYNX, and they do an adequate job because when you call their number, and I just say an adequate job. They do state for the record that the policyholder has the right to choose the repair facility of their choice. And it's emphatic amongst all their people. However, these other networks companies do not. And we got to remember that State Farm is obviously a big player in this state, yes, they write one out of five cars here. And I can see where they need the administration of this, but what about the other four vehicle owners that have a variety of other companies that do their network for them? And these people...Safelite is one of the other companies, I'll name them. Auto Glass Center is one of them. And I would like to share just this little document that one of these networks do pass on to their agents and to the other

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people as inducements, gift certificates for referrals. How would you like to know that you were sent to a specific glass company because your agent or their secretary was getting a gift certificate to a department store? We think there's a lot of misuse and we understand the role of insurance companies to streamline their operations, but not at the expense of customer choice. And when this does that it not only impacts us but it really impacts the consumer. Again, Blair has a Farm Bureau office and if those people aren't in the program...I signed up in the program and I'm getting less work. You know, they encouraged me to sign up with this network. I signed up with them. All the other people signed up with them. Now we get less work. I go from two to five jobs per week, to two to five jobs and I've been in business, and I think we do the same marketing, the same things. You would like to think that by word of mouth that you would be at least maintaining the status quo.

SENATOR MINES: Thank you, Rich. Questions? Senator Louden.

SENATOR LOUDEN: Yeah. Early on we've heard the term certified. I guess, could you give me a description? I mean, who certifies you and where does that come from or that sort of thing? How do I know somebody is a certified glass maker and what does it mean if they say they are?

RICH TRIPTOW: It's strictly a very optional program that companies can either do themselves. They can do them in-house, some of the larger companies do them in-house, but there are a couple of companies, the National Glass Association is one does a certification. But we're not licensed. We're not...there's no registration of technicians. Anybody with a pick-up truck, a toolbox, and a rack can get in our business. And it isn't very well regulated.

SENATOR LOUDEN: Okay, that was my next question. Somebody underneath the shade tree can be a certified glass installer then?

RICH TRIPTOW: Absolutely.

SENATOR LOUDEN: Okay. Thank you.

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SENATOR MINES: Other questions? Rich, you and I have been friends for 20 years and I would trust my daughter's life with her car and the windshield to you. Let's say she caught a rock and my insurance company said, you know what, call this number and they try and steer me to Blair Glass Company. I say you know what? I'd like to go to Omaha Glass. Will your price be the same? See, I really don't care what it costs. I know you're going to do a good job and I know you're not going to take advantage of me. What happens to me?

RICH TRIPTOW: Well, you know, costs could be different. I saw something in the...with Blair the other day on the TV. AAA was using a scenario where gas may cost a few pennies more than in Blair than it does in Omaha for whatever costs, whether it be competition, whatever. And you may have some of the same factors in Blair, but again there's other factors to be considered in here in addition to the installation. And the weather. Today happens to be a very pleasant day, but we have three lousy months where maybe you shouldn't be doing mobile service outside because of the type of adhesives and some of the safety issues that we have to address. Plus you got to look at the consumer's convenience, whether they live or work in Omaha, whether they live and work in Blair, whether they want to use a...there's a lot of local considerations that go on. When I go up to Blair and I see my friends up in Blair and I have done this for 20 years. I solicit the work in Omaha of those people that either live or work in Omaha. It's a nice, soft touch with that to try to get that kind of business...

SENATOR MINES: But let's say they want to steer me to a different place and I say, you know what, I want to give Rich the business. I trust him, I want to give him the business. And I just go to you so is there a possibility that I could pay more, I could pay less? I could pay less with you, right?

RICH TRIPTOW: You could possibly pay less. What happens typically is is you'll...before you get to the price, that will be one of the objectives that the networks will use. Number one, you won't get a lifetime guarantee. You know, if the price is more you're going to have to pay out of pocket. We won't stand behind these people. Well, I've

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been in business 21 years and I think a lot of these other people have been in here much longer than that. And you don't stay in business that long without standing behind your installations and your products.

SENATOR MINES: Good point.

RICH TRIPTOW: And these people make these assumptions because what they do is they ask these people to sign waivers, will you...if there's a problem will you take...well, I don't know any reputable businessman that wouldn't stand behind their products and their installation and help their customer.

SENATOR MINES: Great. Great testimony. Thank you. We have one more testifier in proponent. Is that right? Do we have...just one more? And then we've got two opponents, I believe, right? We're going to hang in here until that's over. Hi.

KENT BAUMERT: Good afternoon. My name is Kent Baumert, B-a-u-m-e-r-t.

SENATOR MINES: First name is Stan?

KENT BAUMERT: Kent.

SENATOR MINES: Kent, I'm sorry. Losing it.

KENT BAUMERT: And I have a small shop in a small community and I live in another small community. The previous testimony here from Mark Rizzi was correct and the economic testimony from Pat Hancock was as stated. The horror stories are not adequately described. They're worse than what the guys are telling you when it comes to steering. If you are not part of a network you will be discriminated against to the point where it hurts your business. So they discriminate against you heavily if you're not in a network. In small communities along that line, emotionally in small communities working on cars, or wheels, or transportation, or things with windshields are the only thing that goes on on main street in many small towns anymore. If you drive around any small community they might have nothing but a gas station and a little car shop. Now, with the steering it's leaning on people with less work just like all the previous

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people have described. As for myself, I personally don't need economic development. I don't need a community block grant to stay in a small town. We need LB 73 to keep people from steering and taking away business from me just like all the previous people I've stated.

SENATOR MINES: Great testimony. Where are you from?

KENT BAUMERT: North Bend.

SENATOR MINES: That's where I was from.

KENT BAUMERT: Your mom's neighbor.

SENATOR MINES: That's right, that's right. That's pressure (laughter).

KENT BAUMERT: I can find you, Senator Mines.

SENATOR MINES: You know where I live (laughter). Questions for Mr. Baumert?

KENT BAUMERT: Please, questions.

SENATOR MINES: Now I get it. Now I get it.

KENT BAUMERT: Please, questions.

SENATOR MINES: I see none but I do thank you for coming in.

KENT BAUMERT: Thank you.

SENATOR MINES: Thank you, appreciate it. No more opponents or proponents. I'm sorry.

SENATOR MINES: All right, and for the record we have Todd Twiss who is a proponent. Is it Kryger Glass Company?

TODD TWISS: (Exhibit 4) Yeah, I just...they pretty much said the same thing so.

SENATOR MINES: (Exhibit 5) Thank you very much. I also have a letter to introduce from Dingman's Collision Center also in support. And Todd's testimony is here as well. Thank you for that. No more proponents. Have we got

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opponents? We had several before. Please come forward and spell your name for us, please.

DAN NORDGREN: Good afternoon. My name is Dan Nordgren, D-a-n N-o-r-d-g-r-e-n. I represent State Farm Insurance and also representing the Nebraska Insurance Information Services today. I'm an estimatics team manager at State Farm. I'd call myself a first line management person for our estimatics program in Nebraska. I work with repairs in Lincoln up to Norfolk, Schuyler, over to Scottsbluff and Alliance. Currently, I work with 92 Service First repair facilities and numerous glass shops so I've got a pretty good feel for really what's going out in the marketplace. I have a tremendous amount of conversations with repair facilities on a day-to-day basis. And just want to make a couple comments about State Farm. I know State Farm's name was mentioned a number of times today. But to start off, State Farm believes very strongly in choice and competition in an effort to encourage, in every case that we can, open competition, to improve efficiency, and better manage claims. I don't think anyone out there wants to pay more insurance dollars every year. And we do whatever we can to improve the efficiency of our claim operation. And by moving to centralized environments like we have our auto claims central here in Lincoln to programs like Service First and LYNX, we've been able to take tremendous dollars out of our claims practices and our expense structure. What does that do? That lowers premiums for our customers and makes us more competitive in the market. You see on a day-to-day basis advertisements on the TV about save 15 percent. We're under tremendous pressure to lower our expense costs as much as we can while still paying what we owe when we have a loss. And we believe very strongly also in returning that vehicle to the condition prior to the loss. I'm going to go out there and encourage my employees to pay every single dollar necessary in order to restore that vehicle and that's very important. We notify our customers, right now, through a letter if they choose a nonprogram shop. If they choose a non-Service First shop I send them a letter and state to them that they've chosen a non-Service First shop and what they need to expect. So we do notify like the bill indicates right now. The question I keep having myself is we hear about choice and then we hear all these horror stories about quality. And to me choice does not equate quality. Under any circumstances choice

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does not do that. I heard it said that last year that I said an insurance customer usually has a claim every eight to ten years depending on the type of coverage. That's true. And when they come to me, very few know where they need to go in order to have their vehicle repaired. In smaller, rural Nebraska very possible because it's probably their neighbor, it's probably their friend, their relative but in bigger communities that's not the case. They ask me, where should I take it? And if it's free choice there's a good chance that their repairs are being done in some backyard body shop, backyard glass facility. As you heard today, there's no certification out there. There's no anything in place to make sure that the quality repairs out there. But through my programs, Service First and LYNX we're trying to move toward that quality. I've implemented quality control programs in our Service First facilities where they've come up with a check sheet to look at quality so it's very important to us. We want to pay for repairs that restore that vehicle based on manufacturer recommendations. There's a lot of comments today about glass quality. And from my perspective any glass that is used in glass repair has to be certified by the federal motor vehicle standards. And we can't be using glass out there that isn't. If there is, that glass installer is in violation of the law. We've also heard today that all this steering is happening across the industry on a day-to-day basis. There's current legislation in place under the unfair claims practices act (Unfair Insurance Claims Settlement Practices Act) that prohibits that. Maybe we need to police the laws that we have. What is going to make it stated that we put a law in place that prohibits steering. If we're not going to police it, it's not going to do any good. So there are some things that I'm looking at. Getting back to choice as well, if you want to look at State Farm we're one in five like was stated. We've got 221 repair facilities in Nebraska for our Service First program. Granted, the majority of those are in the Omaha area, a little over 100, 26 in Lincoln. But we have Service First repairs in Hibner (phonetic), Nebraska. We have them in Grand Island, we have them in Kearney, we have in Bayard, we have them in Madison, various small towns around the area and our customers love the program. They want us to move them toward those programs. And why? Because it's a smooth, efficient process. They can simply take their vehicle to the repair, have an estimate written, pictures

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taken and all that comes to State Farm electronically. The only thing they have to worry about is picking their car up and paying their deductible. The repair facility handles all of it with State Farm, very smooth process. If there's hidden damage or missed damage, we don't hold up repairs. State Farm doesn't need to go out and reinspect those because we have a relationship with that repair facility. Now, let's say we have a problem repair where there needs to be some correction done. When I have a relationship with that repair facility, I'll say I can flex my muscle a little bit for the customer. I can say, hey, I've got an agreement with you as a Service First repair facility. These are my expectations. I can help that customer. If it's a nonprogram shop, I have less of a relationship with them. I have less ability to flex my muscle, to help the customer. Granted, if you look at shops that aren't on the Service First program, most of them are very reputable, very reputable shops. They've made a business decision not to be on the program for whatever reason. Bob's Body Shop was here. They've been offered the program, but they've made the business decision not to be on it for whatever reason. Many of these glass facilities today have been offered our LYNX program. They have made the business decision not to be on the program. I don't know why. But when I look at the whole industry, again I don't ask for concessions. State Farm pays top dollar. We want quality repairs. We are asking shops to do things that they don't feel is necessary. Replacing frames on vehicles in order to meet manufacturer's standards. There's a lot of things going on out there. I think with all this said, it stands to reason why the Nebraska Auto Body Association has rated State Farm the number one insurance carrier two years running. I think we've got pretty strong programs. We've got pretty strong morals in the industry and have a good feel what's needed in the industry. Along with that CollisionWeek has rated State Farm number one three years running over all other insurance companies nationwide because of our repair practices. And I'm thinking with this legislation in place it puts one more thing in line for us to increase our claims handling. They talk about a 23-cent stamp. It takes more than a 23-cent stamp to do a lot of things. You need additional claims service assistance. You need different people watching the claim, working those cues as they come into a centralized environment. It's a huge process when you implement small changes so we are against this bill. I think what we need

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to do is police the current law, possibly place more regulation on the industry for quality to solve a lot of these problems. Any questions?

SENATOR MINES: Thank you, Dan. Questions by the committee? Senator Louden.

SENATOR LOUDEN: Yes, you mentioned the facilities you have that, way over 200 or something like that.

DAN NORDGREN: Um-hum.

SENATOR LOUDEN: Do you have anything in place in your organization to check the work on any of this? I mean, once a windshield is in how can you tell whether or not it was put in right or not until it gets knocked out the next time?

DAN NORDGREN: To be honest with you, once that windshield is put in and the moldings are placed over it, it's very difficult until you start seeing corrosion, you start seeing some leaking on the windshield. Or like a glass facility, they physically take it out of the car. Representatives at State Farm go through industry training called I-CAR. We have a glass replacement program that really shows us what's necessary in order to properly reinstall a windshield. We strongly encourage our repair facilities to go through that training. In terms of a specific program for glass, I don't have an audit program set up at State Farm to audit those specific windshields because it's virtually impossible to see it. Now on a collision repair where you can see the repair, we audit 5 percent of the claims going through our Service First program where one of my representatives physically goes out and they look over the car. If they find any quality issues, we have a discussion with the customer and get that vehicle back in the repair facility to get it corrected.

SENATOR LOUDEN: On your glass then when you inquire and have these people go onto your program, these installers, how do you get them? Do you just write and ask them if they want to be your installer? Or do you have some type of testing that they have to go through or, I mean, how can you pick a shade tree mechanic out from the man that has a multimillion dollar shop? How do you decide between the two?

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DAN NORDGREN: Very good question. We offer our LYNX program to every single repair out there feeling that the more repair facilities we have in our program the more competition there is. And in order to establish a pricing structure for the glass business it's very difficult because it seems like it's a moving target. Have you ever heard of NAGS glass pricing? Some are 67 percent off; some are 50 percent off. I mean, the prices are incredible and right now NAGS is actually in the process of repricing the product, trying to come out with a more standardized pricing system to make it easier because I can't understand personally how one shop can give me 67 percent off and the next shop, large facility doing a lot of work for State Farm can only give me 35 percent off. I don't fully understand that, but our professionals that do the market research and try to establish this based on population base and density have come up with a pricing structure that currently in Nebraska 508 shops have agreed to and I believe are making money at.

SENATOR LOUDEN: Thank you.

SENATOR MINES: Other questions? Senator Redfield.

SENATOR REDFIELD: If you offer the program to all suppliers out there, how do you know that there's quality?

DAN NORDGREN: Based on an assigned agreement in order to say that they meet...

SENATOR REDFIELD: I sign my name and that means quality?

DAN NORDGREN: ...well, but look at the industry itself. There's no certification in the industry itself. They talk about quality all day long but they still don't police themselves. We rely, they're the experts. The repair facility, when they come to us and they install glass we've got to rely on it that they're experts. On the Service First program we have a long list of an agreement that they have to have certain equipment and they have to make certain agreements with State Farm. But in terms of the glass business it's a little more difficult and a lot more facilities out there.

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SENATOR REDFIELD: So let's say a windshield were to leak. What time frame would you have that you would insist that that be replaced?

DAN NORDGREN: We ask for a one-year warranty.

SENATOR REDFIELD: One year.

DAN NORDGREN: Um-hum...

SENATOR REDFIELD: Not lifetime.

DAN NORDGREN: ...a lot of facilities in this room probably offer a lifetime just like body shops do. But it gets difficult. If we all of a sudden come out as a large player like State Farm is and say, every shop out there that's going to be one, one of our programs has to provide a lifetime guarantee. We take way too many players out of the market and we hurt competition.

SENATOR REDFIELD: So you just require one year. Okay.

DAN NORDGREN: Um-hum.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Any other questions? Dan, everyone that testified before us is a small business person and I think you can appreciate where they're coming from. They're getting squeezed, not by your company alone, but they're getting squeezed on both ends. And I think they're just looking for some way to ensure that they get a fair shot at the business and my sense is that, State Farm, not you in particular, you're looking for the absolute best deal so that you can control costs as well. Is there an answer somewhere in the middle that would not only pacify the insurance industry, but would ensure that the small business person has a shot, has a shot at not doing the work, but doing the work and being able to afford to do that work?

DAN NORDGREN: Senator, that's a tough question.

SENATOR MINES: All other businesses, retail is going to the big box stores...

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DAN NORDGREN: Um-hum, oh, we hear the Wal-Mart stories, yeah...

SENATOR MINES: ...is that what you're seeing here as well?

DAN NORDGREN: We hear the Wal-Mart stories every day over in Seward, Nebraska, building a Super Wal-Mart under tremendous pressure from the city council not to let them come in. Do the customers want Wal-Mart? Absolutely. Why? Providing them a service, providing them what they want at a cheap price. What does it do to the small business in town? It hurts them. I own and operate apartment complex. I'm in small business. I understand where they're coming from. But like I said, we are looking to improve the way we manage claims. We're looking for efficiency. And if that means they need to change their business practices possibly, get involved with some of these programs, maybe they need to do...maybe do it.

SENATOR MINES: Okay. Thank you. Any other questions? Thank you.

DAN NORDGREN: Thank you.

SENATOR MINES: Korby, are you the last one? Have we got any other proponents or opponents? We have two opponents.

KORBY GILBERTSON: I think there's one more. We increased our numbers by 50 percent.

SENATOR MINES: Now we're up to three. All right, let's go.

KORBY GILBERTSON: Good afternoon, Chairman Mines, members of the committee. For the record, my name is Korby Gilbertson and spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB 73. I think this bill comes down to, from what I've heard from the proponents, three issues. Number one, insurance companies making recommendations to their customers for who are members of their networks. Number two, that the insureds have to pay an excess charge for repairs done by non-network members. And number three, what I've heard the most of is that there are faulty repairs going on. The first two issues are dealt with in current

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law. If you look on page 6 of LB 73 the language that was stricken currently deals with those issues. Now, the first issue about whether or not they can tell you who, if you ask them, where you should take your car as a policy decision. I would say that and the insurance company should have a right to contract with whom they want. It goes on in health insurance. If we were to get rid of preferred provider organizations the cost of health insurance would arguably skyrocket. For them to argue that there would be no cost difference in insurance rates for property and casualty insurers, if they were required to pay regardless of the cost whatever the cost was for those repairs I can't for a minute argue that the cost of your insurance would not go up. It would because there would be no guarantee whatsoever on the cost of those repairs. That's what these types of agreements protects the consumer for and if that's one of the main arguments for this bill that we need to have the consumers come first, the insurance companies are already doing that by trying to help keep costs down by creating these networks. The third issue about the faulty repairs and that there's no way to police what the insurance companies are doing would have you believe that the insurance companies are intentionally setting out to have windshields replaced incorrectly and endangering their customers. I don't think that could be farther from the truth. However, I do think that, and Senator Mines and I think someone else also brought it up, maybe one of the possible solutions is looking at regulating glass repair industry. And I would leave you at that. I'd be happy to answer any questions.

SENATOR MINES: Thank you, Korby. Questions from the committee? Seeing none, nice job. Thanks.

KORBY GILBERTSON: Thank you.

SENATOR MINES: And Jan, are you the last testifier?

JANIS MCKENZIE: I believe so.

SENATOR MINES: Oh, we have one more. It keeps growing. All right, state your name and spell it, please.

JANIS MCKENZIE: Senator Mines, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e. I'm here representing

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the Nebraska Insurance Federation in opposition to LB 73. I will be very brief. I want to echo the concern about advancing legislation that in some way creates an any willing provider setup for this particular issue. Korby referred to PPOs and ways in which the health insurance industry has worked to try to keep costs down for the consumer so that deductibles can stay as low as possible and premiums can stay affordable. We see this as an issue also from the property and casualty side is that if we're going to say, well, all right, I can go to any doctor and my insurance company has to pay exactly whatever that doctor wants to charge, that's really eroding what has become a way to try to manage the cost of healthcare and health insurance costs. This is a tough issue because the same thing happening to these small businesses is happening within the industry and they may perceive insurance as one huge big thing but, in fact, we all compete with each other just as they all compete with each other. So as one insurance company finds it more and more difficult to keep costs down they either become merged with another insurance company or bought out by another insurance company and it gets bigger and bigger. Farm Bureau used to be only Nebraska. It's now a part of a regional insurance group. It is no longer Farm Bureau of Nebraska. It is now Farm Bureau of a big regional, midwestern regional area. So how we stop what they're, you know, feeling in terms of the pressure from why can't we compete, is happening at every level, at the Wal-Marts, at the hardware stores, at the pharmacies, at the chain drugs, at the mail orders so it's frustrating, it's the trend. I certainly know because I live in a small community and I know when I need something done I don't want to drive 40 miles to have it taken care of either. But our greatest opposition is toward the section in the bill that really begins to create an undue process that has helped keep costs down for consumers so we keep our insurance rates affordable for people. With that, I'd answer any questions.

SENATOR MINES: Thank you. Questions? Rich.

SENATOR PAHLS: What would be your solution? Because already I've heard policing and regulation from...

JANIS MCKENZIE: Well, I think the point is in our unfair trade practices act (Unfair Insurance Trade Practices Act)

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or our sections of statute it already does allow and I understand their concern about not being able to make the complaint, that the consumer needs to make the complaint. So, you know, we probably need to enforce what is already currently in statute in a better manner. I think also the insurance industry as an industry is heavily, heavily regulated. It is the most heavily regulated business in this state and so if the glass people can't put together standards to regulate themselves, you know, it seems to me something there has to change because you can't point to the insurers and say it's the insurers' fault when they haven't regulated their own folks. That might be something. And I think to figure out the pricing of glass because I know that a State Farm testifier made that point. It seems to be all over the place in terms of who's offering what rate for glass so there are some things out there that I think in Nebraska as long as we can find companies who are here and who understand the unique needs of the state, that you can offer something where this is the rate we will pay. It's been negotiated just like you asked, Senator, if I want to go to the shop I want to go to, you will get reimbursed at X rate and that, in fact, you pay out of pocket for anything above that which is what happens if I do that in health insurance. I want to go to this doctor instead of the PPO, this will be covered and I'll have to pay out of pocket for the rest. So I think we need to look at those issues.

SENATOR MINES: Thank you. Other questions? Thanks for your testimony.

JANIS MCKENZIE: Thank you.

SENATOR MINES: Last testifier. In opposition. Please state your name and spell it, please.

JOSEPH TORNBERG: Good afternoon, Mr. Chairman, members of the committee, my name is Joseph Tornberg, T-o-r-n-b-e-r-g. I'm with American International Group. It's not so much opposition to the bill but opposition to specific clauses within it that have both been brought up by members of the committee. The first one would be the clause that Senator Redfield brought up that deals with the statement required by the insurer to send to the insured if they so choose a different repair shop. I believe she is correct in stating that that would require OEM parts to put the product back to

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like original, prior to damage, specifications which, of course, would increase cost to the insurance company. And therefore would be passed on to the insured with higher premiums. Second clause that the chairman brought up is section 1(4)(b) that in my interpretation it has to do with whether the claimant elects the repair shop and there's no limit to discount, or reasonable repair costs that can be charged back by the insurer or offset. And you had mentioned the \$400 to \$410 difference. My interpretation of that clause, I wouldn't be concerned with the \$400 versus \$410. It would be the \$400 versus \$1,000 or whatever the repair shop should deem to send in a bill for because there's no limit to this clause. I believe that both of these clauses would result in higher cost to the insurance company in repairing vehicles and therefore would result in higher premiums to the insured.

SENATOR MINES: Thank you. Questions? Could you help me with American International Group?

JOSEPH TORNBERG: AIG.

SENATOR MINES: AIG. Help me with...I don't understand AIG.

JOSEPH TORNBERG: AIG? We are the third largest company in the world, largest insurance company in the world.

SENATOR MINES: That would be big (laughter). Well, thank you for your testimony. Any other questions? Ladies and gentlemen, I really want to thank you for your patience. We've run long over time. We're not done yet. We are going to let Senator Aguilar close. But I want to...before I do that, thank you for taking time from your schedules to be here. I know it's important to you and your testimony has been great here. Senator Aguilar to close.

SENATOR AGUILAR: Thank you, Senator Mines. A couple of things I wanted to address here. One of the insurance representatives brought up a point that I thought was rather interesting. How can some companies out there offer 37 percent discount? How can some offer a 66 percent discount? I'd really like to know that answer, too. I mean in my mind the only way that happens is you're cutting costs really bad somewhere and how do you cut costs in this industry? Well, to put a windshield in properly you need

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the best adhesive possible. But you can cut corners by buying a cheaper adhesive. With an adhesive and it has to dry and cure for a specific amount of time. If that is not allowed to happen, all the warranties is gone from the product; it doesn't work. And what costs money in the auto body shop is shop time so you have to have that vehicle indoors, allowing that specific adhesive to dry and cure properly for a certain amount of time. I contend that that's not happening in every shop. Another question was asked, how do you become part of the network? Well, the one thing that I never heard anybody answer on how you become part of that network, you have to meet certain costs for a specific installation and if you can't meet that cost, well, you can try to several different ways. You cut costs any way you can and that's not always the best way to do business. As far as the \$10 variation you talked about, Senator, my family and my children's lives would be well worth that \$10 if I had confidence in the company that was making the repair. Thank you.

SENATOR MINES: Thank you, Senator. Any questions for Senator Aguilar? Seeing none, the public hearing is closed. Again, thank you everyone for coming. And as soon as those that leave wish to leave we'll do LB 310. Sorry, no break. Do you need a break?

BREAK

SENATOR MINES: We are going to hear LB 310 and LB 375 together. They are essentially the same bill and I see Senator Connealy is here to make the introduction. Senator Connealy.

LB 310 375

SENATOR CONNEALY: Thank you, Senator Mines and members of the Banking, Commerce and Insurance Committee. I want to thank you. I am Matt Connealy. I have the honor of representing the people of the 16th Legislative District and I'm here to open on LB 310. It changes the liability amount that insured motorists must carry for injury, death, or property damage. Currently, it's 25/50...25; that's 25,000 for loss or injury of one person, 50,000 for two persons, and 25 for property damage. The numbers would change to

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50/100 and 50, just doubling each of those. It's my understanding that these rates have not been changed for over 12 years and I believe that we must change those. I very seldom come in and support mandates or increases that are put up by us, but this came to my attention last year actually in a personal story of my family. My cousin was coming home from work just before Christmas and he's starting out a business and he ended up dropping most of his insurances because of the fact that he's putting everything back into the business, and he ended up losing his life in a car accident in Platte County. And as I looked at what he's going to end up with, you know, with just the liability on his car because of the fact that he actually was hit with by an uninsured motorist and I thought this is not the level that we ought to be at. It hasn't been raised in years. We ought to look at...make sure that base amount is there. As you look at...it's going to cost everyone some, but the main cost of an insurance policy like this is the start-up. You know, increasing this is probably not going to double the cost of insurance. It's going to increase it to some. It follows the amount of inflation. We ought to be looking at this, if it was a right amount 12 years ago at 25,000 at least 50,000 at this time.

SENATOR MINES: Great, nice job. Questions for Senator Connealy? Senator Jensen.

SENATOR JENSEN: Thank you, Senator Connealy. I can recognize the situation. You know, I being in business I have limits far higher than this. What will this do, though, to the guy who can't hardly make the payments on his car and is this...?

SENATOR CONNEALY: It will be a little cost but I don't think it's out of line there. I think it's what we ought to have. I think everyone ought to be covered by a base amount. You know, people make decisions and maybe sometimes that they shouldn't drop insurance or not to carry as much as they should. This is a bottom that I think we ought to have in place to cover costs of accidents and I don't believe that it's excessive. I've never been, since I started business without at least a million dollars worth of liability and usually five million because I just believe that you need to have that. And I believe that everyone should have larger amounts. But I also said that, you know,

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that base amount of insurance is the most expensive part. You know, as you add coverage past that and as you increase the pool, it's not going to be as expensive.

SENATOR JENSEN: Well, \$25,000 in the hospital doesn't get you many days.

SENATOR CONNEALY: No, never much.

SENATOR JENSEN: Yeah.

SENATOR CONNEALY: Or very much auto repair.

SENATOR JENSEN: That's right. Thanks.

SENATOR MINES: Yeah, that's true. Other questions?
Senator Pahls.

SENATOR PAHLS: Okay. We should be able to have some kind of...maybe not from you, or one of the people that will speak behind you. We should have some idea, though, should we not? I mean, a rough estimate what the increase would be?

AUDIENCE: I have (inaudible).

SENATOR PAHLS: Okay, because I couldn't see it being significant.

SENATOR MINES: Thank you. Other questions? Senator Louden.

SENATOR LOUDEN: Yeah, Senator Connealy. You said the other motorist was uninsured?

SENATOR CONNEALY: No license and not insured, um-hum.

SENATOR LOUDEN: Should we be looking at that more than increasing the insurance value? I mean, this happens all the time uninsured motorists and getting in wrecks and, of course,...

SENATOR CONNEALY: And I understand that, Senator Louden, but there's a certain amount of things you can do. If someone's breaking the law, doing things that they aren't

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supposed to do, you can lock them up but you can't catch them all. Allegedly, this person lost the license because they were behind in child support and driving backroads because they didn't want to be caught on, you know, driving a car between work and home. He ended up crossing the highway without stopping at a stop sign. It happens. There's an awful lot of uninsured motorists out there, a lot of people that have dropped their insurance to keep, you know, their costs down as much as possible. I think we need a base as much as we can on the liability.

SENATOR LOUDEN: Yeah, that brings me to my next question. If that's the case then this won't help those uninsured motorists because they're not going to have it anyway no matter how much it is. Will that raise the premiums then on those of us that buy insurance against uninsured motorists?

SENATOR CONNEALY: Your own liability will...this won't change the uninsured motorists. Your own liability that you carry will be higher.

SENATOR LOUDEN: Yeah, but my premiums for uninsured motorist will go up.

SENATOR CONNEALY: A little bit higher. This wouldn't...

SENATOR LOUDEN: Will it not? Because I'll have to be buying instead of that minimum that's for uninsured motorist now I would have to be buying a higher minimum.

SENATOR CONNEALY: Your minimum liability on your own would go up. That's where you'd be covered.

SENATOR LOUDEN: Okay.

SENATOR MINES: Thank you, Senator Connealy.

SENATOR CONNEALY: Thank you.

SENATOR MINES: Will you be here for closing?

SENATOR CONNEALY: I will, yes.

SENATOR MINES: Good, good. Senator Kruse, would you like to open on your bill?

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SENATOR KRUSE: Thank you, Senator Mines and members of the committee. My name is Lowen Kruse, L-o-w-e-n K-r-u-s-e. This is the same bill. We haven't been talking with each other and no one else (laugh) put us both up to it. It's just that he evidently is a genius and I didn't know that (laughter).

SENATOR MINES: He's known it for years (laugh).

SENATOR KRUSE: He's known it, but I didn't. We'll be quick about it and try to respond to some of the things that have been talked about. It came to my attention because of personal experience also and saw the figures are just woefully inadequate. I'll up him on the time. It's been over 20 years, it's 22 years exact since this figure has been changed. And it really doesn't relate to reality anymore. Twenty-five thousand on injury did not pay our son's bills the first night in the hospital. It may seem strange to you but there are Nebraskans in this very conservative state who have vehicles worth \$35,000 and, according to our present law, if their vehicle gets creamed by somebody they're supposed to put up \$10,000 along with the \$25,000 that we've set as the minimum. Frankly, I feel it should be \$100,000 and \$200,000, but as we looked at it we felt be as modest as we can, and so ended up at simply doubling the amount. This would, Senator Loudon, reduce the claims on uninsured because there would be more claims made. In other words, instead of that underinsured person or the minimally insured, I should say, contributing \$25,000 they'd be contributing \$50,000 which would come off of the uninsured. I frankly don't see that it's going to make a lot of difference in terms of costs to the total society because somebody's paying these bills. They are presently paid \$25,000 for the offender and the other person's insurance, we all carry more than that underinsured, almost all of us just have to. And so then my insurance company pays that extra, but the reality is that this is a health insurance matter (laugh). Our son's bills are \$2 million and I know you've seen me as a fairly well-dressed and very rich man but I didn't pay the \$2 million. Our family had to come up with over \$100,000 and that makes the \$25,000 seem a little bit small. But \$1 million of that was from his auto insurance and \$1 million of it was from health insurance. And he's in a group policy. You take a million dollar hit

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on some member in a group policy and it's going to cost money. So the money is going to get paid by somebody. I've been pleased to talk with a number of insurance agents about this and they have been very positive about it. Typical remark is it's about time something was done on it. The cost on it would be about \$2 a month on a typical policy so \$25 a year. There's a return on it for the low-income family. For most families they wouldn't worry about that too much but the low-income family they would notice that. But they get back a certain amount of health insurance because these low-income families would be less likely to have health insurance. They've got a big hospital bill. Currently, all that has to be applied to that is \$25,000 or \$50,000 let's say if there are several family members hurt. Their coverage will be increased by \$50,000 in this specific event for \$25 a year. Not too bad a purchase. The high risk would be higher but I have no apology for that, frankly. We talked about that a little bit and there are other actions being taken so that there will be less uninsured driving and that's a computer matter and it's being cared for. But I, frankly, feel that every person needs to pay their own way on it and I certainly think it's the wrong message to subsidize poor behavior, which is what we're doing right at the present time if we would say, well, they're going to Dairyland and they're going to have an extra high cost. Again, I don't see that the additional cost is a major percentage of the insurance and I would see it as having a low impact on the number of people that would be uninsured which is kind of the response one sometimes gets. Again, the total insurance industry when you take into health insurance account...health insurance would be benefitted in several ways or at least left even. Being a victim of an offending driver is a horrible experience. Our family has had that experience three times. You really feel helpless and you wonder why (laugh) your money should be put up for this. Well, it's again because the state says that all this person has to do is pay \$25,000 on it. In those three experiences I would lift up one man, in closing, who said, this is my fault and it's my bill. He...it took him two years, but he paid every penny back to my insurance company who, of course, were covering mine through the uninsured and that, but he paid every penny of that. And I respect him for that and I think that's the kind of attitude we should have that the offender has the liability here. I thank you.

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SENATOR MINES: Thank you, Senator. Questions from the committee? Senator Redfield.

SENATOR REDFIELD: Senator Kruse, I would have asked the question to Senator Connealy but I came in a few minutes late and when I looked at these bills I thought about single, male, teenaged driver, maybe one or two tickets and the price of their insurance. And I don't think it's going to add \$2 a month because we're talking about high risks that the insurance companies are going to have to recoup, they're going to underwrite for that. So how many of those folks are we going to see just drop their insurance entirely? Have you run any numbers?

SENATOR KRUSE: No, I have not run any numbers and, Senator, I...that is a consideration clearly. But their total insurance bill is huge. This won't increase that bill that much, would be my judgment on it. But even if it does, it's their bill and I don't want to subsidize their behavior by saying the rest of society will pay your bill if you get into trouble with this so.

SENATOR REDFIELD: Would you rather have them have \$25,000 of coverage or would you rather have them have nothing?

SENATOR KRUSE: I would rather have them have the 25 or something else but I don't consider that the option.

SENATOR REDFIELD: Okay. One last...

SENATOR KRUSE: Because they're to have insurance, that's our law, and we're getting ready to enforce it.

SENATOR REDFIELD: I agree. The last question I would have is, this is a sizable hit. If in fact the industry comes back and tells us that the premiums would be a prohibitive jump would you be interested in stepping this up so that it wouldn't go from 25 to 50 immediately, but that it might step up to say, 30 and so on.

SENATOR KRUSE: I would leave this in the hands of the committee. My preference would be 100 and 200. And then negotiate from there. But, you know, I hear you, and, again, it's time to look at it so I'm comfortable with what

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your committee chooses.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Great. Other questions? Thank you, Senator Kruse.

SENATOR KRUSE: Thank you.

SENATOR MINES: Thanks for bringing the bill. Now we are going to take proponents and would you please raise your hand, how many proponents? We have three proponents. Opponents. We have two opponents. And neutral, please. We have five and we're done. Please, proponents come on up (laughter).

PETE WEGMAN: Thank you, Mr. Chair, committee members. My name is Pete Wegman, W-e-g-m-a-n. I'm a partner in the law firm of Remboldt, Ludtke, LLP here in Lincoln and Seward. I'm engaged in the private practice of law and a significant part of my practice involves representing people injured in motor vehicle collisions. I am appearing here today on behalf of the Nebraska Association of Trial Attorneys. I've been a director of that organization for a number of years and on behalf of that organization I am speaking in support of these bills. Twenty-two years ago in 1983 Nebraska law was changed to provide minimum liability limits for motor vehicles of \$25,000 per injured person; \$50,000 for two or more persons injured in one accident; and \$25,000 for property damage. That also required identical limits for underinsured and uninsured coverages required to be written with a primary liability policy. Those limits have remained unchanged since despite tremendous changes in our world. When those limits were last changed in Nebraska, Ronald Reagan was our president. Congressman Tom Osborne was an average football coach who had yet to win a national title. What also changed in those 22 years are the costs incurred by those innocent citizens injured by the negligence of motor vehicle operators. What has changed are the costs of living, medical costs, vehicle costs, vehicle repair costs, all relentlessly increasing while the statutory limits remain locked in the past. For example, the Consumer Price Index under the category for all items, all urban consumers, U.S. city average, has increased almost 89 percent since July, 1983, when then LB 253 went into effect with those

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then new limits through last month. An 89 percent increase in the CPI and no increase in the liability limits. Cost increases in the medical profession have been even greater during that time frame. For example, costs in the general category of medical care in the Consumer Price Index, same categories, have increased almost 213 percent since July of 1983 through the end of 2004. Medical care services, another CPI component, measured over the same time period have increased almost 228 percent. Again, using the CPI the cost of used cars and trucks has increased almost 40 percent over those 22 years. The cost of new vehicles has increased about 38 percent. What does that mean to a Nebraska citizen whom these laws and those limits were designed to protect? It means that increasing amounts of the negligent drivers insurance limits are going to pay the out-of-pocket costs for these collisions. The medical care, the vehicle repair, the vehicle replacement. Decreasing amounts of insurance are available for an injured person's general damages for which Nebraska law requires just compensation. General damages include compensation for temporary improvement, injuries to one's body, and inconvenience and physical pain and mental suffering caused by injuries caused by someone else's negligence. Frequently there simply isn't adequate insurance to fully compensate the injured person's losses. In my practice, I'm increasingly dealing with my own injured clients' insurance company seeking to recover on their own underinsured policy or uninsured policies purchased by my injured client because the responsible party simply did not have enough insurance coverage, even though they may have had the statutory minimum coverages. It seems like there has been a gradual shift of legal and financial responsibility over the years from the negligent driver to the injured person and the injured person's own insurance coverages. And I believe that many Nebraskans are mistaken about two fundamental facts of their motor vehicle insurance. First, many who carry only the statutory minimum coverages believe they have something called full coverage. I hear that all the time. There is no such thing. Second, many Nebraskans believe, I think, that their personal financial exposure due to their negligence in causing a motor vehicle collision is limited to their insurance limits which, again, it's not. There are huge responsibilities that go with operating a motor vehicle in this state as there should be. Many fail to understand that their personal net worth may be on the line every time they get

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behind the wheel of a vehicle. With today's rising medical costs and the new vehicles now costing more than what many of us in this room paid for our first house, it simply does not take much in terms of injuries today to bust the policy limits. When that happens the negligence driver's personal assets are exposed to pay for the damages and that can be a big surprise if that person believes their insurance coverage gave them complete coverage or full coverage. I've had to explain to clients in situations like this how they can have personal exposure even though they purchased and complied fully with Nebraska law regarding motor vehicle insurance. My limited research into what costs will do that involved contacting, I think, the two companies probably write more of these policies than anybody in Nebraska, and I ask them to predict the average person driving the average kind of vehicle you insure what's it going to cost to double these coverages? The quotes I heard ranged from between a dollar a month and \$2.68 a month. And I don't know what those will be for the teenage high-risk driver. I assume they're going to be higher. But what this is about is increasing limits to be consistent with what all the other costs around us are doing and trying to keep as much responsibility on the people that are causing these damages rather than the people that aren't. I appreciate your time and your consideration and we would appreciate your support of these bills. Thank you.

SENATOR MINES: Thank you, Pete. Questions by the committee?

PETE WEGMAN: Thank you.

SENATOR MINES: Seeing none, thanks a lot. Next testifier. Please spell your name, tell us who you are, where you're from.

MIKE HYBL: Senator Mines, members of the committee, my name is Mike Hybl spelled H-y-b-l. I'm the registered lobbyist for the Nebraska Trucking Association testifying in support of both LB 310 and LB 375. As mentioned earlier, the minimum policy limits have not been increased since 1983. Interestingly enough, I think just from a historical perspective, the bill that was introduced in 1983 did propose, in its introductory form, the limits that we have in front of us today. The committee when we moved the bill

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out set them at the limits we have now. The interest of the Trucking Association in this bill is obviously that the commercial trucking industry does share the road with the general motoring public. The equipment that the industry uses is significantly more expensive than the \$50,000 limit that we have in this bill for property damage, but it is the view of the association that given the increases that have occurred over the last 22 years that if the policy of the state is going to be that we're going to have minimum policy limits there should be some rational basis to where costs are and it is our view that after 22 years now is an appropriate time to look at what those minimum limits should be. And with that, I'll take any questions you may have.

SENATOR MINES: Thank you, Mike. Questions by the committee? Seeing none, thank you for your testimony.

MIKE HYBL: Thank you.

SENATOR MINES: Joe, you're next.

JOE ELLIOTT: My name is Joe Elliott, E-l-l-i-o-t-t. I'm a lobbyist with the Professional Insurance Agents Association. Iowa has 25/40 limits. South Dakota 25/50. Oklahoma 15/30. That just gives you a flavor. South Dakota turned down a bill in February to increase the limits from 25/50 to 50/100. The Transportation Committee killed the measure 7 to 4 because of opposition from PCI and State Farm. Their average premium in South Dakota is \$619 a year per automobile. Nebraska, we're pretty close to the same. These figures are usually two, three years old before they give them to us but South Dakota is ranked 46th out of 51 so their premiums are low. An independent agent has got a duty to his customers to give them the best coverage he can for a price that they can afford. And I guess I've had a long time belief in higher limits and been selling umbrellas since the early sixties which is a million dollars of coverage additional. For \$120 a year I don't think I can sell you anything out of our shop, and I don't make a lot of commission out of that, in fact; \$120 a year is a pretty good average of an umbrella unless you've got lots of boats and several homes and so forth. But for that money you're getting the best attorney you can possibly get in the sense that when you're sued for a million dollars on a life lawsuit, if you only got \$25,000 limits the first thing that

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the insurance company is going to do is write you a letter and say, say Joe, you've got to protect your interests above the \$25,000. We're just liable for the first layer. And for the hourly rate that they're getting you could see that that's a...it's a good buy. But the underlying coverage has to be 100/300 and that's where the rubber meets the road I guess in the sense that a lot of people can't afford that and we realize that. I think you'd be surprised at the number of people that do have limits of 50 and 100. We haven't sold a policy and we have six offices around the state. I don't think we've sold a policy for less than 100/300 and encourage them to get an umbrella. And there's a lot of independent agents that have been thinking that way for a long time. I talked to an agent in a small town of 2,000 this morning. I said, how many policies do you write automobiles? He said 1,400. How many do you have minimum limits on? He says less than 25 and so I think there's a lot of that going on even in the smaller communities. Maybe you get in the far western part of the states, you get some people that just don't believe in spending that kind of money for insurance because they're never going to have an accident. So you run into that situation but also on uninsured motorists, I think that 50,000 is significant, too. That's the coverage that's been new in the last 20 years. It's become very, I think, popular in the sense that we only...if you buy 100/300 we're going to insist that you buy the same uninsured motorist because if we don't sell that to you we could be liable for an errors and omissions coverage so that's standard procedure in our operation, too. As to the cost, South Dakota said 20 percent. I think that's quite high. It's all going to be relative and I talked to a nonstandard insurance writer that writes a lot of policies in Omaha. As you know, there's just a lot of business flowing through there and he said that they favor it strongly. They don't write a lot of 25 and 50 unless they get somebody that's...we had one the other day that we sent over there and I think the premium was \$173 a month so it's over \$2,000, but they had about three or four violations and a DWI. And so it was...but I think that they sell also what you call a middle layer in there of nonstandard auto, preferred nonstandard auto they call them. And they require, all of the companies require 50/100 minimum limits on that. So there is a move afoot certainly to get these limits up and I hear the arguments long and hard on uninsured motorists and the percentages. South

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Dakota's got a 6 percent. Oklahoma's got 30 percent. Colorado had 35 and it's down now they claim because of the data processing coverage, I think it's down there somewhere in the 25 percent range. Nebraska is somewhere between 5 and 10. I think Senator Landis used to propound and beat on ten pretty much as being the top part of the uninsured motorist and I don't think that's been going up. But nonetheless, I stand for the agents and say, we feel that we have an obligation to keep the limits at a reasonable level.

SENATOR MINES: Thank you, Joe. Questions? We have one. Senator Johnson.

SENATOR JOHNSON: I hate to kind of ask questions at this time of the day but where are we standing with the technology to identify...

JOE ELLIOTT: Uninsured motorists.

SENATOR JOHNSON: ...uninsured people and so on that...

JOE ELLIOTT: Well, that database bill is still...it's proceeding. It's been going on for about four years now and I noticed that Colorado who had the first one, have upgraded theirs now and they increased the fines. They had a fine of \$100 and a lot of people just kind of laughed at that. And I think they're talking about going to \$300 because they could buy...pay the fine a lot less than they could buy the insurance and that's still the case in many cases. But there's still hang-ups because there's a lot of company reporting and keeping it accurate. And if I've insured you for 20 years and for some reason or other you give us the wrong VIN number and that gets you into the database wrong and you get stopped and you get pulled over and you get a ticket. And you get calling me and complaining. What's going on? I've got insurance with you. And then you get into the interplay of it so I think eventually we'll get it. I think that's going to be the answer but I think it's still a few years away.

SENATOR MINES: Great. Thanks, Joe. Appreciate your testimony.

JOE ELLIOTT: Okay.

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SENATOR MINES: We have any more proponents? None.
Opponents? We have two. Yes. Can you do five minutes?

JIM DOBLER: I can do that.

SENATOR MINES: Okay.

JIM DOBLER: (Exhibit 1) Senator Mines, members of the committee, my name is Jim Dobler, J-i-m D-o-b-l-e-r. I am executive vice president and general counsel Farmers Mutual of Nebraska. I appear before the committee in opposition to these two bills as a registered lobbyist on behalf of Nebraska Insurance Information Service. I have a handout. My handout relates to rates and the cost of changing the limits. While that's being handed out, let me say initially involved in the auto insurance business we see day in and day out the injuries, the horrible accidents. Truly the heartbreak that can arise when you have any kind of auto accidents and I'll tell you, my heart goes out to Senator Connealy and Senator Kruse and the situations they face. No amount of money can erase the difficulties that are involved in a collision, but at least becomes a little easier if there's adequate insurance to take care of things. The example that I've handed out, auto rates are public record. There are software programs that essentially will plug in a company's rates and you can plug in the information. It will show you what it costs and that's what I've done. I've used a comparison rater and the very top sheet is...and I've highlighted the more important parts but you can see here, we're looking at a risk in Lincoln, Nebraska. The company is IMT and you can see this is a standard risk so this is not high risk. The term of the policy is 12 months. IMT, in this example, is going to insure four vehicles. The first two vehicles are Fords and those are driven by Mom and Dad roughly age 50. The third vehicle is a Chevy Cavalier and that's driven by their 19-year-old son. The fourth vehicle is a Dodge Neon. This is their daughter, age 17. Now if you go down to the category which says bodily injury and you can see first I've highlighted 25/50, and as you move to the right you can see the cost of that insurance for each vehicle, and at the far end you can see the total is \$761. Right below that we have the rate for 50/100 and again, you can go across the columns and you can see the total for that is \$943. So the BI liability coverage goes up \$182 for this family of four. Next you move down to

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property damage and you can see the same thing there, the \$25,000 figure and the \$50,000 figure. You can see at 25 it's \$1,029; at 50 \$1,081, another 52 bucks. So for this family it's \$234 a year. Example two is essentially the same thing, only it's with a different company. You'll see at the top it's Auto Owners and you can see them on my little figures at the far right I've computed an increased premium of \$280 for this same family. I hope my math is right in adding it up but I think it is. The final page, this is an ISO form and this is just a rate schedule they have on file with the department. And you can see there, I've highlighted the factor and where it goes from 25/50 to 50/100; 25/50 would represent ISO's baseline rate of 1 and then as the rates go up they move a percentage off of their baseline. And you can see it goes from 1 to 1.20 which is a 20 percent increase which I believe is the same as what South Dakota was suggesting. Beyond that, and the tough part is, if you increase the minimum limits it costs more. It impacts those who can least afford it because they generally buy the low coverage. In addition, it will impact even more high-risk drivers because their premiums at that low level are going to be even bigger than the premium for the average family of four that I gave you an example for. It's going to increase, I would think, the tendency would be that it will increase the uninsured motorist population. Do you want to have more paying at 25/50 or do you want to have more carrying the load at 50/100? Do you want a larger uninsured population or not? Those are the issues for the committee. I can tell you right now, if we move to 50/100/50 we will be number one in the nation, the very highest that's out there and this is based off Insurance Information Institute statistics from '04. Missouri is less than us; Iowa is less than us; Kansas is less than us; Colorado is; South Dakota is the same. In terms of premium in Nebraska, our average premium \$553. We are, if the lowest is number 51, including the District of Columbia, we are at number 44. Our uninsured motorist population, very low. Everything I've ever seen it's in the 6 to 8 percent. Colorado full-blown compulsory, they used to be up around 30 percent. They went to a full-blown compulsory system reporting data every day. They've lowered it to the area of 15 percent. They're still a long ways from where we're at. Their premiums are more expensive, though. So, again, if it's affordable you're going to have less uninsured motorists. The more expensive it gets I think the higher

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that's going to be. That I...

SENATOR MINES: Great, thanks, Jim. Committee, any questions? Senator.

SENATOR JOHNSON: I hate to ask questions late in the day here. But, you know, I guess the thing that bothers me with what you're saying is this, is that you don't want to raise the fees for those that are being the bad actors, but we want to allow the expense to be passed on to the innocent. There's going to be a certain amount of expense. I think we'd all agree with that. Now, somebody's going to have to bear that expense.

JIM DOBLER: Right.

SENATOR JOHNSON: Now, do you want it to be the innocent person or the bad guy?

JIM DOBLER: Absolutely. It ought to be the bad guy. The problem is, when you raise it the bad guy isn't going to buy it (laugh).

SENATOR JOHNSON: Well, I understand that.

JIM DOBLER: But I agree with you.

SENATOR JOHNSON: But the...

JIM DOBLER: I do. That's tough.

SENATOR JOHNSON: Yeah. You know,...

JIM DOBLER: It really is.

SENATOR JOHNSON: ...I actually knew one family that had four children and all four of them were on high risk. Well, (laugh) you know, maybe they ought to have a little talk (laughter).

JIM DOBLER: Absolutely. And if they're high risk and they're paying it, good, they should. They're causing it; they ought to pay it.

SENATOR MINES: Great. Thank you, Jim. Any other

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questions? Thank you. Korby, I think you're it.

KORBY GILBERTSON: I'll try to make this as quick as I can.

SENATOR MINES: Just give us the facts.

KORBY GILBERTSON: (laugh) Chairman Mines, members of the committee, for the record my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB 310 and LB 375. I think Joe Elliott made my argument for me even though I don't think he intended to. The people who can afford to buy higher levels like he said they're selling 100 and 300 are doing so. What this bill will really impact are those bad actors that have high-risk insurance that can't afford to buy it once it doubles to \$50,000 so we will increase the number of uninsured motorists. That's the bottom line. That's what I've heard from the PCI members and that's what I'll leave you with. Short (laugh).

SENATOR MINES: Thank you. Senator Jensen.

SENATOR JENSEN: Thank you. Korby, if we lowered it to 10, would we reduce the number of uninsured?

KORBY GILBERTSON: Uninsured motorists?

SENATOR JENSEN: If that's the relationship...

KORBY GILBERTSON: You know what? I don't know if we would in Nebraska because Nebraska has such a low number right now. And so I can't tell you yes or no on that.

SENATOR MINES: Any other questions? Thank you, Korby, appreciate it.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Senator Connealy, would you like to close on yours? Senator Connealy waives. Senator Kruse.

SENATOR KRUSE: Just one comment, hardly worth sitting down for (laugh). Appreciate the testimony on both sides. Recognize that we've talked about increased insurance rates

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but we haven't talked about decreased insurance rates and I have no things to produce on that. I mean, I have no figures. But uninsured risk is certainly going to go down and health insurance liability is certainly going to go down. I thank you.

SENATOR MINES: Senator, thank you. Any questions of the Senator? I want to thank everyone for your patience. We are...both of these hearings are hereby closed and we are adjourned for the day. Thank you.